

## SPECIAL TOPIC – Superannuation death benefit nominations



“Mr. Frosty, it’s March.  
Time to talk estate planning.”

Following the death of a superannuation fund member, the superannuation fund must pay a death benefit to an eligible beneficiary or the member’s legal personal representative (LPR) as soon as practical.

Unfortunately, in a number of cases superannuation members die with no valid nominations in place, which leads to delays and unintended consequences.

Accordingly, it is important that a number of questions are considered when organising your nomination:

1. What type of death benefit nomination can be completed?
2. Is the nominated beneficiary an eligible dependant?
3. How can the benefits be received (lump sum or income stream)?
4. Will the nominated beneficiary be considered to be a death benefits dependant or not?
5. What tax implications will there be?

### What type of death benefit nomination can be completed?

**Non-Binding:** This **does not** ensure your benefit will go to the person you have nominated. A non-binding death benefit nomination is not binding on the trustee of the superannuation fund; however the trustee will take the member’s wishes into consideration when making a decision as to whom to pay the benefit.

In this situation, a trustee will undertake a claims process in order to determine who should receive the death benefit payment, which can lead to a delay in making the payment(s).

**Binding & Reversionary:** In contrast, where a binding, non-lapsing binding or reversionary nomination is completed then the trustee is compelled to pay the death benefit to the nominated person as long as they are an **eligible dependant** at the time of death.

A binding nomination will expire after 3 years.

A non-lapsing binding nomination does not expire and will stay permanently in place unless you decide to change it.

### Is the nominated beneficiary an eligible dependant?

Superannuation law restricts who is an eligible dependant to receive a death benefit payment as detailed in Table 1.

Table 1	Super Dependant	Tax Death Benefits Dependant
Spouse (Including same-sex & defacto)	Yes	Yes
Former Spouse	No	Yes
Child under age 18 (including an ex-nuptial, adopted & step-child of the person or their spouse)	Yes	Yes
Child over age 18 (financially independent)	Yes	No
Person with whom an interdependent relationship existed	Yes	Yes
Financially dependent person at the time of death	Yes	Yes
Other person who is not a financial dependant at the time of death.	No	No

Importantly, from Table 1 it can be seen that a dependant for superannuation purposes is not always a dependant for tax purposes.

In addition to this list, a trustee may also pay the death benefit to the member's LPR (estate) but the tax consequences are still determined by the relationship with the ultimate beneficiary.

## How can the benefits be received (lump sum or income stream)?

A superannuation death benefit can only be paid as an income stream when being paid to an eligible dependant.

In all other cases, the benefit must be paid as a lump sum only. Table 2 summarises the available payment options:

Table 2	Lump-Sum	Income Stream
Spouse (including same-sex & defacto, but not a former spouse)	Yes	Yes
Former Spouse	Yes	No
Child under age 18 (including an ex-nuptial, adopted & step-child of the person or their spouse)	Yes	Yes
Child over age 18 and financially independent	Yes	No
Child over age 18 but under 25 financially dependent	Yes	Yes
Disable child (no age restrictions)	Yes	Yes
Person with whom an interdependent relationship existed	Yes	Yes
Financially dependent person at time of death	Yes	Yes

## Will the nominated beneficiary be considered to be a death benefits dependant or not?

A superannuation death benefit is taxed depending on whether the recipient is a tax death benefits dependant or not (refer to Table 1).

Where a person is not a tax death benefits dependant, tax is payable on any taxable amount received (refer to table 3).

Table 3	Superannuation component	Tax Payable
If deceased or Beneficiary aged 60 or over	Tax free	Tax free
	Taxable (Taxed)	Tax free
	Taxable (Untaxed)	Taxed at MTR, 10% offset
If decease and beneficiary under age 60	Tax free	Tax free
	Taxable (Taxed)	Taxed at MTR, 15% offset
	Taxable (Untaxed)	Taxed at MTR

## What tax implications will there be?

When the superannuation death benefit is paid as an income stream it is taxed as follows:

Table 4 Superannuation Component	Death benefits dependant	NOT a death benefits dependant
Tax free	Tax free	Tax free
Taxable (Taxed)	Tax free	Taxed at a maximum of 15%
Taxable (Untaxed)	Tax free	Taxed at a maximum of 30%

It should be noted whilst not a requirement, a superannuation fund trustee is able to pay an anti-detriment amount and increase the taxable portion of death benefit payment by the amount of tax deducted from the member's account.

The Anti-Detriment Payment (ADP) is a legacy of the Simpler Super reforms which became effective on 1 July 1988.

The purpose of this payment is to refund tax paid on concessional (deductible) contributions upon death and effectively increase the superannuation death benefit available to dependant beneficiaries. It is important to note that this payment can only be made if the financial institution providing the superannuation account actually elects to make the payment, and they are under no legal obligation to do so.

An anti-detriment amount can only be paid if a lump sum is paid to an individual who was a spouse, former spouse or a child of the deceased.

Where the superannuation death benefit payment is made to the trustee of a deceased estate, the benefit is taxed in the same way it would have been taxed if the payment was made directly.

## Conclusion

When choosing a death benefit nomination it is important to consider each of the above questions to ensure unintended consequences do not occur.

In situations where the member has both – death benefits dependants and NOT death benefits dependants – it may be worth discussing the option of directing the assets held within superannuation to the dependant and assets held outside of superannuation to the non-dependant.

By doing so, a financial planner can assist a client to work with their solicitor and their accountant to put together an estate plan that effectively meets the client's wishes.

**Contributed by Brendon Colville, Financial Planning Client Services Manager**

[BACK TO TOP](#)

**# Acknowledgement: We wish to acknowledge Lifespan Financial Planning as the source of the information used in the preparation of this newsletter. The economic and investment analysis content of this newsletter is based on their latest published Personal Wealth Spring Newsletter for 2014.**

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