



eState of Play

Simon Whiteley, Equity Trustees Superannuation Limited

Estate planning can be quite complex and professional advice should be sought to ensure that your superannuation goes to who you want to benefit. Today, I would like to shed some light on the different types of death benefit nominations and what they actually mean.

Benjamin Franklin once said, "In this world nothing can be said to be certain, except death and taxes". For those who believe that death taxes or duties were abolished back in the 1970s, I suggest that you think again! They have simply reinvented themselves as superannuation death benefit taxes. How you instruct your Superannuation Trustee to pay your superannuation benefit is going to have a significant impact on how your balance is treated for taxation purposes and how much money your beneficiaries will receive.

Firstly let's go through the types of nominations a person can make. Keep in mind that superannuation is not an estate asset, i.e. it will not be distributed via your will unless you specifically instruct the Superannuation Trustee to do so.

1. Legal Personal Representative

This nomination will pass your superannuation assets onto your estate to be distributed as per your will. This nomination can be either a preferred or binding nomination (see below).

2. Preferred Nomination

A preferred nomination allows you to request that your superannuation death benefit be distributed to a specific person or persons. However, should a person make claim to entitlement of part or all of your superannuation death benefit, the Superannuation Trustee is required to consider the validity of their claim and make a decision whether or not to distribute any or all of the proceeds to them. That said, this is not something to be alarmed about and does not mean that the milkman is going to end up with half of your fortune. There would need to be some evidence of financial dependence of the claimant on you at time of death. Such dependency could be illustrated by ex-spouses, children from prior marriages or possibly the mistress or cub that some people choose to support.

3. Binding Nomination

A binding nomination is similar to a preferred nomination except that it removes Superannuation Trustee discretion as to who can receive your superannuation death benefits. It means that the Superannuation Trustee must distribute the proceeds exactly as you have instructed them on the binding nomination form. No correspondence can be entered into by other parties provided the form is filled out correctly i.e. the nomination must be valid.

4. Reversionary Pensions

Once you have entered the pension phase of superannuation you will have the option of nominating a reversionary pension. A reversionary pension simply means that the pension is not cashed out and paid as a lump sum; instead it will continue to be paid as a pension. It is not uncommon for a number of superannuation products in the market to require you to make this nomination at the commencement of the pension. In contrast, some superannuation funds such as Wealthpac include a provision in their Trust Deed which allows the Trustee to pay a benefit as a reversionary pension in the absence of such an agreement and where it is in the best interest of the beneficiary. One of the key benefits of a reversionary pension is that it means the death benefit can remain invested in the favorable tax environment of superannuation which as you know can be as low as 0%.

Tips and Traps

Again, I must stress that estate planning is a complex landscape and professional advice must be sought. This field is complex and requires specialist solicitors to provide advice to people regarding Estate planning strategies and will include wills, tax management and asset protection where required. Without proper planning you could find a large percentage of your estate being distributed to barristers, the ATO and others who you did not wish to bequeath a penny.

Estate planning is a specialist service offered by our parent company Equity Trustees. Please contact me if you would like more information regarding this service.

Who can you nominate for a superannuation death benefit?

When making a nomination for a lump sum death benefit it's not as simple as nominating anyone. Parents, siblings, boyfriends and girlfriends are not dependants unless financial dependency or an interdependency relationship can be proven.

In order to make a valid nomination (other than your spouse or children) you must nominate someone who is considered financially dependent under the Superannuation Industry Supervision (SIS) Act. In addition, to complicate things, the tax treatment of your benefit payment is impacted by the definition of dependant under the Incomes Tax Assessment Act.

The table below shows the types of people that meet the SIS Act definition of a dependant and the types of people that meet the Tax Act definition of Dependand. Failure to meet both definitions can result in adverse tax outcomes.

Dependant includes	SIS Act	Tax Act	Tax friendly outcome?
1. Spouse	Yes	Yes	Yes
including defacto	Yes	Yes	Yes
including previous spouses	No*	Yes	No
2. Children	Yes	Yes	Yes
including adopted, step ex-nuptial	Yes	Yes	Yes
including age 18 or above	Yes	No*	No
3. Any financially dependant person	Yes	Yes	Yes
4. Interdependency relationship	Yes	Yes	Yes

*Unless covered by 3

How is a death benefit usually taxed?

A lump sum benefit paid to a dependant is usually tax free. Non-dependants however can be taxed at up to 30% plus the Medicare Levy.

Reversionary pensions are generally tax-free when the beneficiary is over age 60. For beneficiaries under 60, concessional tax rates may apply.

Financial advice

For any further information or to discuss your financial situation, please don't hesitate to contact me on **0413 244 733** or email simon.whiteley@eqtsuper.com. I look forward to hearing from you.

Disclaimer: This information in this update is intended to be only general in nature and does not take into account your personal financial situation, goals or objectives. You should not rely on this information to make investment decisions or interpret it as financial advice. You should seek professional financial advice before making any investment decisions to ensure they are appropriate for your individual circumstances, goals and objectives.