

## **Death benefits : Who can receive them? In what form can they be paid? How are they taxed?**

The Superannuation Industry (Supervision) Act (1993) and Regulations (“SIS”) set out detailed rules governing:

- to whom death benefits can be paid (often referred to as “SIS dependants”); and
- what form the death benefit payments can take (ie, pension vs lump sum).

The taxation treatment of the death benefit payments is governed by the Income Tax Assessment Act 1997 (“Tax Act”) and different rules apply to:

- death benefits dependants (ie, often referred to as “tax dependants”); versus
- non death benefits dependants.

The definitions of “dependant” in SIS and the Tax Act are sometimes different as detailed in the table overleaf.

The interaction of these rules is often quite complicated and misunderstood. We have therefore provided some handy tables which outline the options available.

Please note that a reference to “NANE” in these tables refers to a payment that is non-assessable income and is non-exempt income. Non-assessable non-exempt income is specifically excluded when determining the recipient’s taxable income and does not need to be reported on the recipient’s tax return. It therefore has no effect whatsoever on the recipient’s taxation position.

## Definitions of “dependant”

	Those eligible to receive the death benefit payment directly (SIS)	Those eligible for concessional tax treatment (Tax Act)
<b>Spouse<sup>1</sup>, includes:</b> <ul style="list-style-type: none"> <li>De facto</li> <li>Former spouse</li> <li>Same – sex partner</li> </ul>	<p>Yes</p> <p>No</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<b>Child<sup>2</sup>, includes:</b> <ul style="list-style-type: none"> <li>Child under age 18</li> <li>Child financially dependant (any age) just prior to death</li> <li>Child in an interdependency relationship with deceased just prior to death</li> <li>Child over 18, not financially dependant nor in an interdependency relationship</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p>
<b>Other Dependant</b> Includes someone who, just prior to the death was: <ul style="list-style-type: none"> <li>financially dependant<sup>3</sup> on the deceased; or</li> <li>in an interdependency relationship<sup>4</sup> with the deceased</li> </ul>	<p>Yes</p>	<p>Yes</p>
<b>Estate</b>	<p>Yes</p>	<p>Only if the ultimate beneficiary would be eligible for concessional tax treatment if the payment had been paid to them directly</p>
<b>Any other person</b>	<p>Yes, but only if there is no estate formed and the deceased has no spouse, children or other dependants</p>	<p>No</p>

<sup>1</sup> The spouse of an individual includes:

- (a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the Acts Interpretation Act 1901 as a kind of relationship prescribed for the purposes of that section; and
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

<sup>2</sup> The child of an individual includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the person; and
- (b) a child of the person's spouse; and
- (c) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

<sup>3</sup> Generally where the support is necessary and relied upon

<sup>4</sup> Two persons (whether or not related by family) have an **interdependency relationship** if they have a close personal relationship and (unless either or both of them suffer from a physical, intellectual or psychiatric disability) they live together, one or each of them provides the other with financial support, and one or each of them provides the other with domestic support and personal care.

## Balance in accumulation phase : Who can receive a death benefit? In what form? What is the tax treatment?

Deceased had an accumulation balance	Who can receive a death benefit				
	Spouse	Child	Other Dependant	Estate	Another person if no spouse, child, other dependants or no estate formed
<p><b>Can the trustee pay the death benefit in the form of a lump sum?</b></p> <p>For each beneficiary the trustee can pay either:</p> <ul style="list-style-type: none"> <li>a single lump sum; or</li> <li>an interim lump sum plus a final lump sum</li> </ul>	Yes	Yes	Yes	Yes	Yes
<p><b>When must the lump sum payment be made?</b></p> <p>Note that:</p> <ul style="list-style-type: none"> <li>there is no specific time limit for the payment of the lump sum;</li> <li>nor does the timing of the payment affect how the lump sum is taxed.</li> </ul>	As soon as practicable after the member dies	As soon as practicable after the member dies	As soon as practicable after the member dies	As soon as practicable after the member dies	As soon as practicable after the member dies
<p><b>Must the lump sum payment be made in cash?</b></p>	No, it could also be made by an in-specie transfer of fund assets (at market value).	No, it could also be made by an in-specie transfer of fund assets (at market value).	No, it could also be made by an in-specie transfer of fund assets (at market value).	No, it could also be made by an in-specie transfer of fund assets (at market value).	No, it could also be made by an in-specie transfer of fund assets (at market value).
<p><b>Can the recipient benefit (ie, receive an increased lump sum payment) from an anti detriment amount?</b></p> <p>The recipient may be entitled to an increased lump sum payment (per s 295-485 of the ITAA 1997)</p>	Yes	Yes, irrespective of the child's age	No	Only if the ultimate recipient is: <ul style="list-style-type: none"> <li>the spouse; or</li> <li>a former spouse; or</li> <li>a child (irrespective of age) of the deceased at the time of death or payment</li> </ul>	Only if the recipient is a former spouse of the deceased at the time of death or payment

## Balance in accumulation phase : Who can receive a death benefit? In what form? What is the tax treatment?

	Spouse	Child	Other Dependant	Estate	Another person if no spouse, child, other dependants or no estate formed
<p><b>How is the lump sum taxed?</b></p> <p>NANE refers to amounts that are not assessable income and not exempt income</p>	NANE (regardless of underlying components)	<p>NANE (regardless of underlying components) if:</p> <ul style="list-style-type: none"> <li>aged less than 18; or</li> <li>was financially dependant on / in an interdependency relationship with the deceased just prior to their death.</li> </ul> <p>Otherwise, the lump sum will be taxed as follows:</p> <ul style="list-style-type: none"> <li>tax free component – NANE</li> <li>element taxed in the fund – 16.5% (inc Medicare)</li> <li>element untaxed in the fund – 31.5% (inc Medicare)</li> </ul>	NANE (regardless of underlying components)	<p>Depends on the ultimate beneficiary.</p> <p>To the extent that the lump sum passes to a spouse, former spouse, child (aged under 18, financially dependent / in an interdependency relationship just prior to the death) or any other dependant, the benefit will be NANE (regardless of components).</p> <p>Otherwise, the lump sum will be taxed as follows:</p> <ul style="list-style-type: none"> <li>tax free component – NANE</li> <li>element taxed in the fund – 15%</li> <li>element untaxed in the fund – 30%</li> </ul>	<p>The lump sum will be taxed as follows:</p> <ul style="list-style-type: none"> <li>tax free component – NANE</li> <li>element taxed in the fund – 16.5% (inc Medicare)</li> <li>element untaxed in the fund – 31.5% (inc Medicare)</li> </ul>
<p><b>Could the trustee of the SMSF choose to pay a pension to the beneficiary instead of a lump sum?</b></p> <p>For each beneficiary, one or more pensions could be paid</p>	Yes	<p>Yes but only if, at the time of death, the child:</p> <ul style="list-style-type: none"> <li>is aged under 18; or</li> <li>is aged under 25 and was financially dependant on the deceased; or</li> <li>has a permanent (or likely to be permanent) intellectual, psychiatric, sensory or physical disability which results in substantially reduced capacity for learning, communication or mobility which needs ongoing support services.</li> </ul> <p>Unless disabled, a lump sum must be paid no later than the child's 25<sup>th</sup> birthday or immediately if the pension is commuted earlier.</p>	Yes	No	No

## Balance in accumulation phase : Who can receive a death benefit? In what form? What is the tax treatment?

	Spouse	Child	Other Dependant	Estate	Another person if no spouse, child, other dependants or no estate formed
How would the pension payments be taxed?	<p>If either the:</p> <ul style="list-style-type: none"> <li>deceased was aged 60 or over when they died, or</li> <li>recipient is aged 60 or over the pension payments will be NANE (regardless of the underlying components).</li> </ul> <p>Otherwise, the taxable portion of the pension payments will be taxed at the recipient's marginal tax rate (less a 15% tax offset)</p>	<p>If the deceased was aged 60 or over when they died, the pension payments will be NANE (regardless of the underlying components).</p> <p>Otherwise, the taxable portion of the pension payments will be taxed at the recipient's marginal tax rate (less a 15% tax offset).</p>	<p>If either the:</p> <ul style="list-style-type: none"> <li>deceased was aged 60 or over when they died, or</li> <li>recipient is aged 60 or over the pension payments will be NANE (regardless of the underlying components).</li> </ul> <p>Otherwise, the taxable portion of the pension payments will be taxed at the recipient's marginal tax rate (less a 15% tax offset)</p>	N/a	N/a
<p>If the new pension was subsequently commuted &amp; a lump sum drawn, how would the lump sum be taxed?</p> <p>Generally <sup>1</sup>, if the new pension is commuted within the latest of:</p> <ul style="list-style-type: none"> <li>6 months after the death of the deceased; or</li> <li>3 months after grant of probate/letters of administration of the deceased's estate</li> </ul> <p>the lump sum will be a superannuation <b>death</b> benefit (and the recipient may be entitled to an increased lump sum payment)</p> <p>If the lump sum is made outside this 6/3 month window it will be a superannuation <b>member</b> benefit</p>	<p>If a superannuation <b>death</b> benefit, the lump sum will be NANE (regardless of underlying components)</p> <p>A superannuation <b>member</b> benefit will be taxed as follows:</p> <ul style="list-style-type: none"> <li>tax free component – NANE</li> <li>element taxed in the fund: <ul style="list-style-type: none"> <li>NANE if recipient is aged 60 or over</li> <li>16.5% (inc Medicare) on amount in excess of \$165,000 if recipient is aged 55 – 59</li> <li>21.5% (inc Medicare) if recipient is aged under 55</li> </ul> </li> </ul>	NANE (regardless of underlying components)	<p>If a superannuation <b>death</b> benefit, the lump sum will be NANE (regardless of underlying components)</p> <p>A superannuation <b>member</b> benefit will be taxed as follows:</p> <ul style="list-style-type: none"> <li>tax free component – NANE</li> <li>element taxed in the fund: <ul style="list-style-type: none"> <li>NANE if recipient is aged 60 or over</li> <li>16.5% (inc Medicare) on amount in excess of \$165,000 if recipient is aged 55 – 59</li> <li>21.5% (inc Medicare) if recipient is aged under 55</li> </ul> </li> </ul>	N/a	N/a

<sup>1</sup> A longer period may apply (at the discretion of the Regulator) if the payment of the benefit is delayed because of legal action about entitlement to the benefit or because of reasonable delays in the process of identifying and making initial contact with potential recipients of the benefit

**Account-based / allocated / market linked pension continues to another person on death –  
What options are there? What is the tax treatment?**

Deceased had: • a pension in place; which • continues to another person on death	Who can receive a death benefit				
	Spouse	Child	Other Dependant	Estate	Another person if no spouse, child, other dependants or no estate formed
Is the beneficiary eligible to continue to receive the pension?	Yes	<p>Only if, at the time of death, the child:</p> <ul style="list-style-type: none"> <li>• is aged under 18; or</li> <li>• is aged under 25 and was financially dependant on the deceased; or</li> <li>• has a permanent (or likely to be permanent) intellectual, psychiatric, sensory or physical disability which results in substantially reduced capacity for learning, communication or mobility which needs ongoing support services.</li> </ul> <p>Unless disabled, a lump sum must be paid no later than the child's 25<sup>th</sup> birthday or immediately if the pension is commuted earlier.</p>	Yes	No	No
How would the pension payments be taxed?	<p>If either the:</p> <ul style="list-style-type: none"> <li>• deceased was aged 60 or over when they died, or</li> <li>• recipient is aged 60 or over the pension payments will be NANE (regardless of the underlying components).</li> </ul> <p>Otherwise, the taxable portion of the pension payments will be taxed at the recipient's marginal tax rate (less a 15% tax offset)</p>	<p>If the deceased was aged 60 or over when they died, the pension payments will be NANE (regardless of the underlying components).</p> <p>Otherwise, the taxable portion of the pension payments will be taxed at the recipient's marginal tax rate (less a 15% tax offset).</p>	<p>If either the:</p> <ul style="list-style-type: none"> <li>• deceased was aged 60 or over when they died, or</li> <li>• recipient is aged 60 or over the pension payments will be NANE (regardless of the underlying components).</li> </ul> <p>Otherwise, the taxable portion of the pension payments will be taxed at the recipient's marginal tax rate (less a 15% tax offset)</p>	N/a	N/a

**Account-based / allocated / market linked pension continues to another person on death – What options are there? What is the tax treatment?**

	<b>Spouse</b>	<b>Child</b>	<b>Other Dependant</b>	<b>Estate</b>	<b>Another person if no spouse, child, other dependants or no estate formed</b>
<b>Can the recipient commute the pension and receive the death benefit in the form of a lump sum?</b>	<p>Yes, unless:</p> <ul style="list-style-type: none"> <li>the pension is a market linked pension; and</li> <li>the term of the pension was set based on the life expectancy or period of years to the 100<sup>th</sup> birthday of the primary beneficiary's spouse (ie, the reversionary pensioner).</li> </ul> <p>In these cases, the market linked pension cannot be commuted (and a lump sum paid) until the death of both the primary beneficiary and the spouse.</p>	Yes	Yes	N/a	N/a
<b>How would the lump sum be taxed?</b>	<p>If a superannuation <b>death</b> benefit, the lump sum will be NANE (regardless of underlying components)</p> <p>A superannuation <b>member</b> benefit will be taxed as follows:</p> <ul style="list-style-type: none"> <li>tax free component – NANE</li> <li>element taxed in the fund: <ul style="list-style-type: none"> <li>NANE if recipient is aged 60 or over</li> <li>16.5% (inc Medicare) on amount in excess of \$165,000 if recipient is aged 55 – 59</li> <li>21.5% (inc Medicare) if recipient is aged under 55</li> </ul> </li> </ul>	NANE (regardless of underlying components)	<p>If a superannuation <b>death</b> benefit, the lump sum will be NANE (regardless of underlying components)</p> <p>A superannuation <b>member</b> benefit will be taxed as follows:</p> <ul style="list-style-type: none"> <li>tax free component – NANE</li> <li>element taxed in the fund: <ul style="list-style-type: none"> <li>NANE if recipient is aged 60 or over</li> <li>16.5% (inc Medicare) on amount in excess of \$165,000 if recipient is aged 55 – 59</li> <li>21.5% (inc Medicare) if recipient is aged under 55</li> </ul> </li> </ul>	N/a	N/a