

## What happens to your superannuation when you die?

*Superannuation is not like other assets as it is held in trust by the trustee of the superannuation fund. When you die, it does not automatically form part of your estate but instead, is paid to your eligible beneficiaries by the fund trustee according to the rules of fund, superannuation law, and the death nomination you made.*

### Death nominations

Most people have a death nomination in place to direct their superannuation to their nominated beneficiaries on their death. There are four types of death benefit nominations:

**Binding death benefit nomination** - Putting in place a binding death nomination will direct your superannuation to whoever you nominate. As long as that person is an eligible beneficiary, the trustee is bound by law to pay your superannuation to that person as soon as practicable after your death. Generally, death benefit nominations lapse after 3 years unless it is a non-lapsing binding death nomination.

**Non-lapsing binding death benefit nomination** - Non-lapsing binding death nominations, if permitted by your trust deed, remain in place unless the member cancels or replaces them. When you die, your super is directed to the person you nominate.

**Non-binding death nomination** - A non-binding death nomination is a guide for trustees as to who should receive your superannuation when you die but the trustee retains control over who the benefits are paid to. This might be the person you nominate but the trustees can use their discretion to pay the superannuation to someone else or to your estate.

**Reversionary beneficiary** – if you are taking an income stream from your superannuation at the time of your death (pension), the payments can revert to your nominated beneficiary at the time of your death and the pension will be automatically paid to that person. Only certain dependants can receive reversionary pensions, generally a spouse or child under 18 years.

If no death benefit nomination is in place - If you have not made a death benefit nomination, the trustees will decide who to pay your superannuation to according to state or territory laws. This will often be a financial dependant to the legal representative of your estate to then be distributed according to your Will.

### **Is your death benefit valid?**

There have been a number of court cases over the years that have successfully contested the validity of death nominations, particularly within self managed superannuation funds. For a death nomination to be valid it must be in writing, signed and dated by you, and witnessed. The wording of your nomination also needs to be clear and legally binding. If you nominate a person, ensure you use their legal name and if the superannuation is to be directed to your estate, ensure the wording uses the correct legal terminology.

### **Who can receive your superannuation?**

Your superannuation can be paid to a SIS dependant, your legal representative (for example, the executor of your will), or someone who has an interdependency relationship with you.

A dependant is defined in superannuation law as 'the spouse of the person, any child of the person and any person with whom the person has an interdependency relationship'. An interdependency relationship is where someone depends on you for financial support or care.

### **Do beneficiaries pay tax on you superannuation?**

Whether or not the beneficiaries of your superannuation pay tax depends on who the superannuation was paid to and how. If your superannuation is paid as a lump sum to a tax dependant, the superannuation is tax-free. The tax laws have a different definition of who is a dependant to the superannuation laws. A tax dependant for tax purposes is your spouse or former spouse, your child under the age of 18, or someone you have an interdependency relationship with. Special rules exist if you are a police officer, member of the defence force or protective service officer who died in the line of duty.

If your superannuation is paid to your estate, the tax laws use a 'look through' approach when superannuation death benefits are distributed to the deceased's legal representative. This involves determining whether the final recipient of the superannuation is a dependant or a non-dependant of the deceased.

If the person is not a dependant for tax purposes, for example an adult child, then there might be tax to pay.

### **Recruiting new employees? The 1 November superannuation rule changes**

When your business hires a new employee, the Choice of Fund form is used to identify where they want their superannuation to be directed. If the employee does not identify a fund, generally the employer directs their superannuation into a default fund.

From 1 November 2021, where an employee does not identify a fund, the employer is required to contact the ATO and request details of the employee's existing superannuation fund or 'stapled' fund (the fund stapled to them). The request is made through the ATO's online services through the 'Employee Commencement Form'.

If the ATO confirms no other fund exists for the employee, contributions can be directed to the employer's default fund or a fund specified under a workplace determination or an enterprise agreement (if the determination was made before 1 January 2021).