DEPENDANTS FOR TAX AND SUPERANNUATION PURPOSES

At the time of death, your spouse (or de-facto), child or any other person in an interdependent relationship with you can claim your superannuation death benefits under Superannuation legislation.

While the Superannuation legislation dictates who can receive your super, tax legislation and specifically the Income Tax Assessment Act 1997 dictates how the individual receiving your benefits (your beneficiary) is **taxed** on this. If a beneficiary is taken to be a dependant as defined under the Income Tax Assessment Act 1997 they may receive a lump sum payment of the super benefits tax free.

Who is a dependant under the Income Tax Assessment Act 1997 (ITAA)?

Unsurprisingly, the definition of a dependant under tax legislation is far more complex than under Superannuation legislation. Generally dependants are:

- A spouse or de-facto spouse;
- A former spouse or former de-facto spouse;
- Children of the deceased aged under 18 years old;
- A person in an interdependency relationship with the deceased; and
- A person financially dependant on the deceased.

What is an interdependent relationship?

An interdependent relationship is defined by the following:

1. Whether you have a close personal relationship with the beneficiary;
2. Whether you live with the beneficiary;
3. Whether you provide, or were provided with, financial support; and
4. Whether you provide, or were provided with, domestic support and personal care.

These conditions are considered as at the date of death.

An interdependent relationship may still exist if all the above conditions are not met, but only where there are specific circumstances that prevented all the conditions being met. For example: physical, intellectual or psychiatric disability, or temporarily having to live apart due to being overseas.

Example 1: *A parent naming their adult child as their beneficiary. Their child chose not to live with their parent, did not have a necessarily close relationship with them and was not provided any financial or personal support.*

In this case, an interdependent relationship would not apply as none of the relevant factors could be shown to be met. An interdependent relationship does not exist merely due to the relationship being of parent and child.

Example 2: *A parent naming their adult child as their beneficiary. Their child lived with them and received financial assistance with living expenses. The child assisted with domestic chores around the home and provided support to the parent in the form of emotional care.*

In this case, an interdependent relationship could be argued as all the conditions can be seen to be met.

When determining whether an interdependent relationship exists, some of the factors to consider include:

- Duration of the relationship;
- Ownership, use and purchasing of property;
- Degree of commitment to a shared life;
- Public aspects of the relationship;
- Degree of emotional support;

- Extent to which the relationship was a mere convenience; and
- Evidence suggesting whether the relationship was intended to be permanent.

When determining whether an interdependent relationship exists, the greater number of factors able to be shown, the more likely the relationship will satisfy the conditions under tax legislation.

What is a financially dependant relationship?

A financially dependant relationship exists when your beneficiary is reliant on you for all or a major amount of their financial support. A key factor in determining financial dependency is whether the amount provided is substantial. It is important to note that financial contributions do not necessarily have to be more than 50% of the required amount to be considered substantial. Rather, the determining factor is whether the beneficiary relied on your support to maintain their **normal standard of living**. Partial financial dependency can generally be sufficient to establish a relationship of dependence.

Example 3: *A parent naming their adult child as their beneficiary. The parent paid $50 a week to their child to assist with the child's living costs away from home. The child was working full-time but still relied upon this weekly allowance.*

In this case, financial dependency could be argued as the allowance was necessary to the child to maintain their standard of living. Despite the fact the child was working, this wouldn't exclude them from being reliant on their parent.

Example 4: *A parent naming their adult child as their beneficiary. The parent paid for the ongoing private school fees of their beneficiary's child (their grandchild). The beneficiary was earning their own income at the time.*

In this case, financial dependency could be argued as the payment was relied on for payment of ongoing school fees and related to maintaining their standard of living.

Claiming dependency under this definition is limited to support being provided to the beneficiary (that is, a one-way dependant). In contrast, interdependency is two-way, wherein either party can be supporting the other however, the support provided cannot just be financial.

If you have any questions or concerns on how these could impact you, please contact our Client Services Team on (08) 9227 6300 or email clientservices@austasiagroup.com for more information.

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