



Estate Planning for Blended Families Utilising Superannuation

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Clients involved in a blended family commonly request that a portion of the superannuation death benefit is to pass to a second spouse, with the balance to children of the deceased.

Such a request can be structured in a number of ways.

What follows is an overview of how superannuation death benefits can be structured in respect to Blended Families.

Option 1: Divide the Superannuation Death Benefit between Spouse and Children

Overview

- On death, the relevant portion of superannuation death benefit is given to the second spouse in their own names, and
- On death, the relevant portion of the superannuation death benefit is bequeathed to a testamentary trust for the benefit of the children.

Advantages:

- The spouse receives their interest of the superannuation death benefit tax free in their own hands,
- The adult children are guaranteed to receive a portion of the superannuation proceeds from their natural parent, and
- The children receive their portion of the superannuation death benefit in a testamentary trust.

Disadvantages:

- The superannuation death benefit will be taxed in the hands of the testamentary trust for the children, unless the superannuation death benefit consists wholly of a tax free component and is paid ultimately to tax free dependants, and
- Capital Gains Tax (CGT) may be payable by the Superannuation Fund (Fund) in relation to the withdrawal of the superannuation entitlements.

Option 2: Withdraw Superannuation Entitlements from the Fund

Overview

- Superannuation proceeds are withdrawn before death of the member from the Fund,
- Provided the individual is over the age of 60, such withdrawal will be tax free, and
- A portion of the superannuation proceeds are bequeathed to a testamentary trust for the benefit of the adult children.

Advantages:

- The children are guaranteed to receive a portion of the superannuation proceeds from their natural parent,
- The superannuation death benefit received by the testamentary trust is tax free, and



- The children receive their portion of the superannuation death benefit in a testamentary trust.

Disadvantages:

- It is difficult to predict the timing of one's own death. Hence the superannuation monies may be prematurely withdrawn from the superannuation system, which is an attractive tax concessional and asset protection entity, and
- CGT may be payable by the Fund as a result of transactions relating to the withdrawal of the superannuation entitlements.

Option 3: Understanding that Spouse Gifts Superannuation Monies to Children

Overview

- All of the superannuation death benefit is paid to the second spouse, and
- The second spouse then gifts some time thereafter monies to children, but whilst the spouse is alive, part of the superannuation proceeds are utilised for the benefit of gifts to the children directly.

Advantages:

- All superannuation monies are received tax free by the spouse and the children. However, care will need to be taken to ensure that any obligation of the second spouse to gift part of the superannuation monies to the children is non-binding as the Commissioner of Taxation could take the view that under section 302-10 of the Income Tax Assessment Act (1997) (ITAA) the superannuation death benefit is to pass to a non-tax dependant and thus are taxable, and

- Superannuation entitlements are retained for a longer time in the superannuation system.

Disadvantages:

- Children are reliant on the second spouse gifting part of the superannuation proceeds to the children (which may not occur), and
- There is a risk that Part IVA may be applied by the Commissioner to such an arrangement.

Option 4: Conditional Approach with Spouse

Overview

- All of the superannuation death benefit is paid to the second spouse,
- Other estate assets such as the primary residence pass to a testamentary trust, the potential beneficiaries of which are the second spouse and the children,
- The trustee of the testamentary trust is an independent person, and
- In a letter of wishes to the trustee of the testamentary trust, the Client expresses the non-binding wish that the second spouse is only to receive a benefit under the trust (i.e. access to the primary residence and/or other estate assets) where a certain portion of the superannuation monies have been gifted by the second spouse to the children.

Advantages:

- All superannuation monies are received tax free by the spouse and the children. However, care will need to be taken to ensure that any obligation of the second spouse to gift part of the superannuation monies to the children is non-binding as



the Commissioner of Taxation could take the view under that section 302-10 of the ITAA the superannuation death benefit is to pass to a non-tax dependant, and

- The superannuation monies are retained for a longer time in the superannuation system.

Disadvantages:

- It is only suitable where the value of the estate assets held in the testamentary trust exceed the value of the superannuation death benefit. Where this is not the case, there is no incentive for the second spouse to gift the superannuation monies to the children in order to obtain the lesser valued assets in the trust,
- Children are still reliant on the second spouse gifting part of the superannuation proceeds to the children, and
- There is a risk that Part IVA may be applied by the Commissioner to such an arrangement.

Option 5: Restricted Reversionary Pension

Overview

- An account based pension is established for the spouse,
- On the death of the spouse, a reversionary pension is commenced for the second spouse, with the following terms:
 - Commutation or collapse of reversionary pension is prohibited,
 - The maximum annual payment allowed is equal to the minimum annual payment prescribed by the SIS Regulations,
 - On the death of the second spouse, the balance of the pension must be paid to

the estate of the second spouse,

- Under the Will of the second spouse, that portion of the superannuation death benefit relating to the reversionary pension is to be bequeathed to the deceased spouse's children, and
- The Client and the second spouse enter into a mutual agreement not to amend their Wills in respect of their superannuation death benefits.

Advantages:

- The second spouse receives pension income for the remainder of her life, which could be tax free depending upon the ages of the Client and the second spouse,
- Upon the death of the second spouse, the children are entitled to all superannuation monies provided the agreement can be enforced,
- The assets funding the pension are retained in the superannuation environment which provides tax concessional and asset protection vehicle advantages, and
- No CGT is payable by the Fund in relation to the withdrawal of the assets supporting the superannuation death benefit.

Disadvantages:

- The second spouse only receives an income entitlement to the superannuation monies whilst she is alive, and
- The capital of the superannuation death benefit will be retained in the superannuation environment. This means that it will need



to be invested in investments that are allowed by the SIS Act. For example, the capital will not be allowed to acquire say, a holiday house, that may be used by the second spouse.

What ever option is chosen would ultimately depend on a Client's particular circumstances as well as their needs and objectives.

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For Further information please visit www.ili.com.au or contact:
Melinda Wood - ili Enquiries (02) 9251 3611 enquiries@ili.com.au