



SMSFs and estate planning

The golden rules to getting it right

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But first.... You need to know

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AGENDA

- What documentation do you need?
- Who makes the decisions?
- What did the deceased want?
- Who can be paid a death benefit?
- Taxation and other issues



What are the key documents you need?



What are the key documents?

- SMSF Trust Deed
- Pension commencement documents
- Member death benefit instructions
- Member annual benefit statements
- Deceased member's will



What does the trust deed tell us?

- When does the benefit become payable?
 - How to calculate the amount
 - Treatment of insurance
 - What date is used
- Who can appoint new trustees and timing?
 - Trustees and/or members
- What type of nominations are acceptable?
- When does trustee discretion apply?

Other documents

- Pension commencement documents
 - proof of reversionary pension nomination
- Annual member statements
 - Trustee confirmation of state of play
- Nomination forms
 - to allow member instructions/wishes
- Deceased member's will
 - Nominates a party who can engage with the SMSF

Golden rule - keep copies of key member documents with Will

Who decides who gets the death benefit?

Who makes the decisions?

Golden rule – check the SMSF trust deed

- Surviving trustees still have powers to make decisions
- No new trustee is compulsorily required to be appointed
- Timeframes exist for action due to SMSF definition
 - (6 months after date of death)
- When is trustee discretion applied?

Conflict of interest

- SIS permits the LPR to be appointed
- Legal personal representative must manage potentially different and conflicting roles
- Is the LPR acting as :
 - SMSF Trustee
 - Death benefit potential recipient, or
 - Executor of deceased estate?

Golden rule – deceased member instructions can remove some conflicts

Deceased member instructions



How does a member give death benefit instructions?

- Reversionary pensions
- Nonbinding death benefit nominations
- Lapsing binding death benefit nominations
- Non-lapsing binding death benefit nominations



Member instructions

Reversionary pensions

- Deceased must be in pension phase
- Death benefit recipient must meet SIS requirement to receive a death benefit pension

Non-binding death benefit nomination

- A guide for trustees but not enforceable
- Could trigger claim staking but not likely
- Effectively permits trustee discretion

Member instructions

Lapsing binding death benefit nomination

- Only defined in SIS – does not automatically apply to SMSFs
- Can be applicable based on SMSF trust deed

SIS rules include

- 3-year period
- 2 "independent" witnesses
- Obligation to remind member nomination details annually

Member instructions

Non-lapsing binding death benefit nomination

- Only applicable based on SMSF trust deed
- 3 year lapsing rules not required but good practice

Reversionary pensions vs death benefit nominations

- Trust deed will determine order

Golden rule – dependant status can change so nomination need to be reviewed

Who can be paid the death benefit?

Dependant definitions

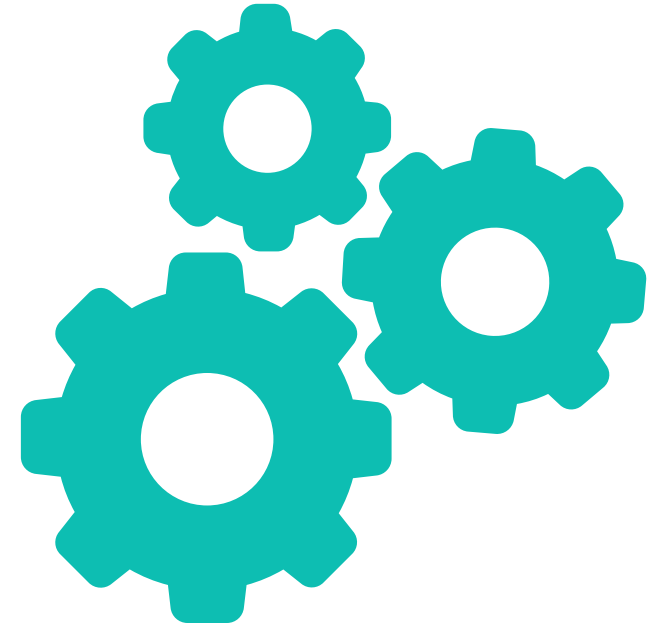
SIS dependant definition determines who can be paid

- Applies to benefits paid directly from the SMSF
- Also impacts how the death benefit can be paid

To pay anyone else either

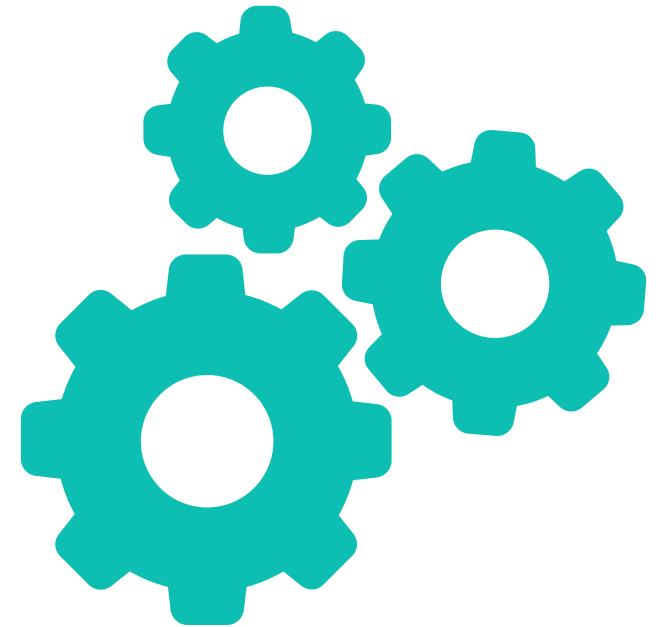
- There are **NO** SIS dependants, or
- SMSF pays the estate

Tax dependant definition determines benefit tax rates



SIS Dependants

- Legal or De-facto spouse
- Child of any age
- Interdependency relationships
- Financial dependency
- Legal personal representative

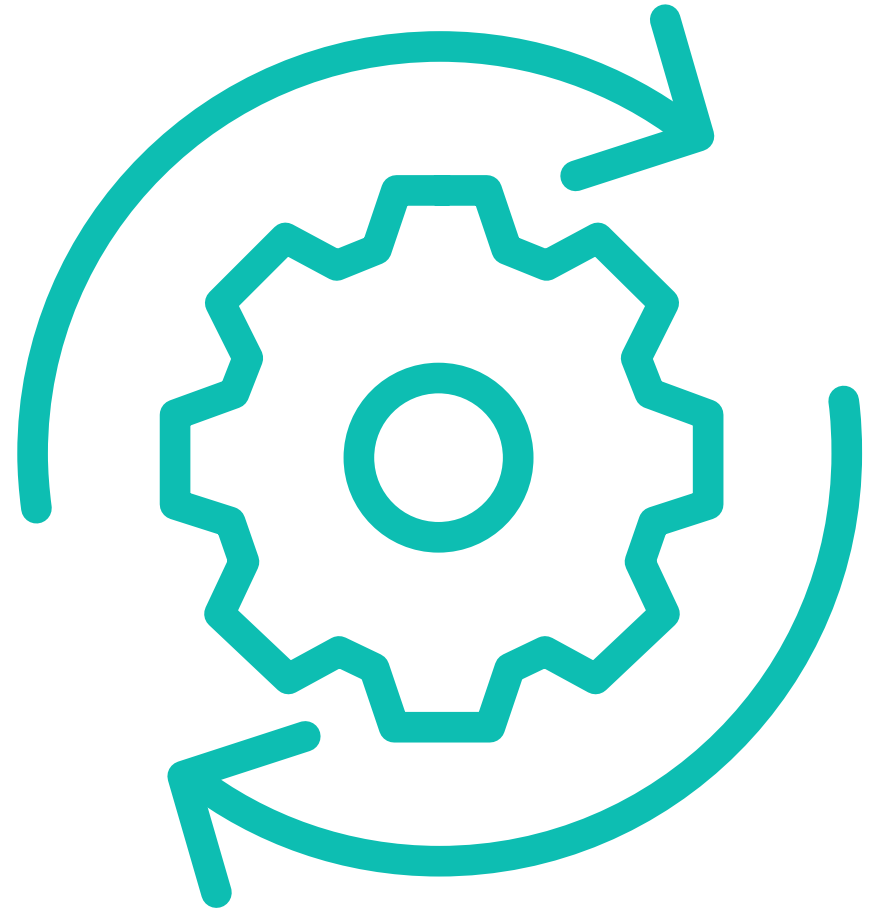


Legal or De-facto spouse

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, and

Another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under the law of a State or Territory

(Same for Tax definition)



How to verify De-facto relationships

- duration of the relationship;
- nature and extent of the common residence;
- whether or not a sexual relationship existed;
- procreation of children;
- degree of financial interdependence & arrangements for support;
- ownership, acquisition and use of property;
- performance of household duties;
- degree of mutual commitment and mutual support;
- reputation and "public" aspects of the relationship



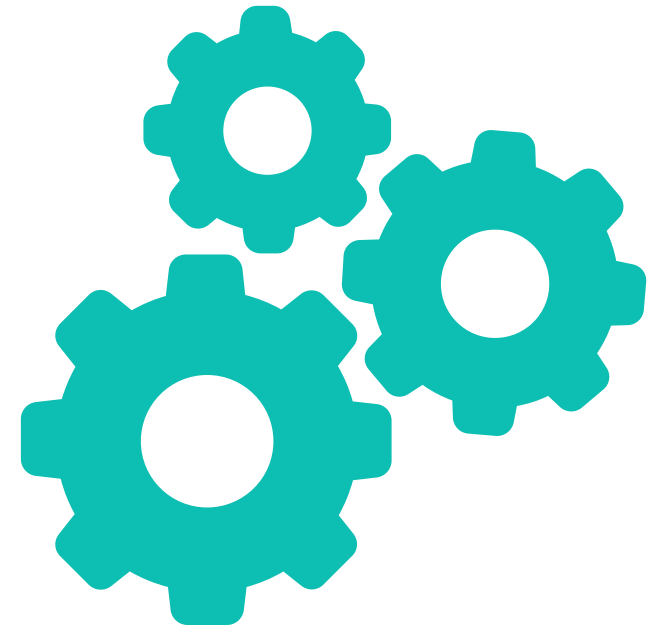
Who is a child?

SIS Includes:

- Step-child, ex-nuptial child or adopted child
- Child of the person's spouse and
- Child within the meaning of the Family Law Act 1975

Tax is different !!

- Age & financial support are key factors



Key issues

ATO ID 2011/77

The stepchild/step-parent relationship is severed when the marriage of the parent ceases (either due to the death of the natural parent or upon the divorce of the natural parent from the step-parent)

- Could qualify as financial dependant or interdependency
- Estate planning implications

Interdependency relationships

Characterised by

- A close personal relationship
- Living together
- Financial support
- Domestic support and Personal care

Still can be met if shared domicile is not satisfied only because of physical, intellectual or psychiatric disability.

Same rules for Tax definition

Financial dependency

SIS Financial Dependant

Faull v SCT [1999] NSWSC 1137

Court held that Mrs Faull was dependent as this augmented her other income. It did not matter that she did not need the money

Tax Financial Dependant

Malek v FC of T 99 ATC 2294

Test is whether the person relied or depended on the regular, continuous significant contributions of financial support

ATO determinations

ATO ID 2014/22

Adult child (over 18) caring for terminally ill parent?

Adult child gave up work to care for terminally ill parent & received financial support from parent during that period

Satisfied both Financial Dependency and Interdependency relationship

ATO ID 2014/6

Adult child in receipt of Youth Allowance deemed to be financially dependent due to Centrelink Assessment

- Payment was at lower "at home rate"

Lump sum or pension death benefit?

Death benefit pensions

- Reversionary pensions paid to nominated dependants automatically on the death of a deceased member in pension phase
- Death benefit pensions to allowed dependants based on trustee & dependent agreement where the deceased was in pension phase
- Death benefit pensions to allowed dependents based on trustee & dependent agreement where the deceased was in accumulation phase



Which SIS dependant can receive pensions?

Covers all death benefit pension types

The person must be a SIS Dependant of the member: AND

- If a child, then under 18:OR
- If a child, financially dependant under age 25: OR
- If a child who is disabled

If paid to a child, then

- Must be commuted to lump sum on or before child turns 25 years of age
- Unless child is disabled as per the Disability Services Act 1986

Definition summary

Dependant	SIS definition of dependant (regulates who can receive a death benefit)	Tax definition of dependant (determines how a death benefit is taxed)	Pension availability (can a pension be paid)
Spouse – married	Yes	Yes	Yes
Spouse – de facto/Same Sex	Yes	Yes	Yes
Spouse – former	No	Yes	No
Child – under age 18	Yes	Yes	Yes
Child – over age 18	Yes	No unless financially dependent or interdependent relationship	No unless Permanently Disabled or Under 25 and financially dependent
Financially dependent at the time of death	Yes	Yes	See Above
Interdependent	Yes	Yes	See Above

Golden rule – Dependant definitions are verified at date of death

Taxation of death benefits



Lump sum death benefits

As with all other benefit payments a death benefit lump sum has tax components

- A tax-free component
- A taxable component

The taxable component has two elements if the lump sum benefit includes insurance proceeds

Components are based on a formula

- Taxable component – taxed element
- Taxable component – untaxed element



Lump sum death benefits

Tax dependants - total benefit is tax free

- Spouse, child U18, financial dependent, interdependent

Non dependants (mainly adult children):

- 0% tax free component
- 15% taxed element
- 30% untaxed element – only applicable if insured benefits & deduction is claimed that relates to the insured benefit and the deceased was under 65,
- Medicare levy if paid from fund (not Estate) is 2%



Death benefit pensions

As with all other pension a death benefit pension sum has a taxable proportion established at pension commencement date

Tax determined by age of deceased and/or beneficiary

- If deceased or beneficiary 60+ , then Pension is tax free
- If deceased and beneficiary < 60, then Taxable component taxed at marginal rate with 15% tax offset
- Becomes tax free once the pensioner turns age 60

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Other taxation issues

- Any lump sums commuted are taxed as lump sum death benefits but cannot be rolled into accumulation
- Death benefit pensions are subject to Transfer Balance cap rules which limit the initial amount in a death benefit pension





Questions

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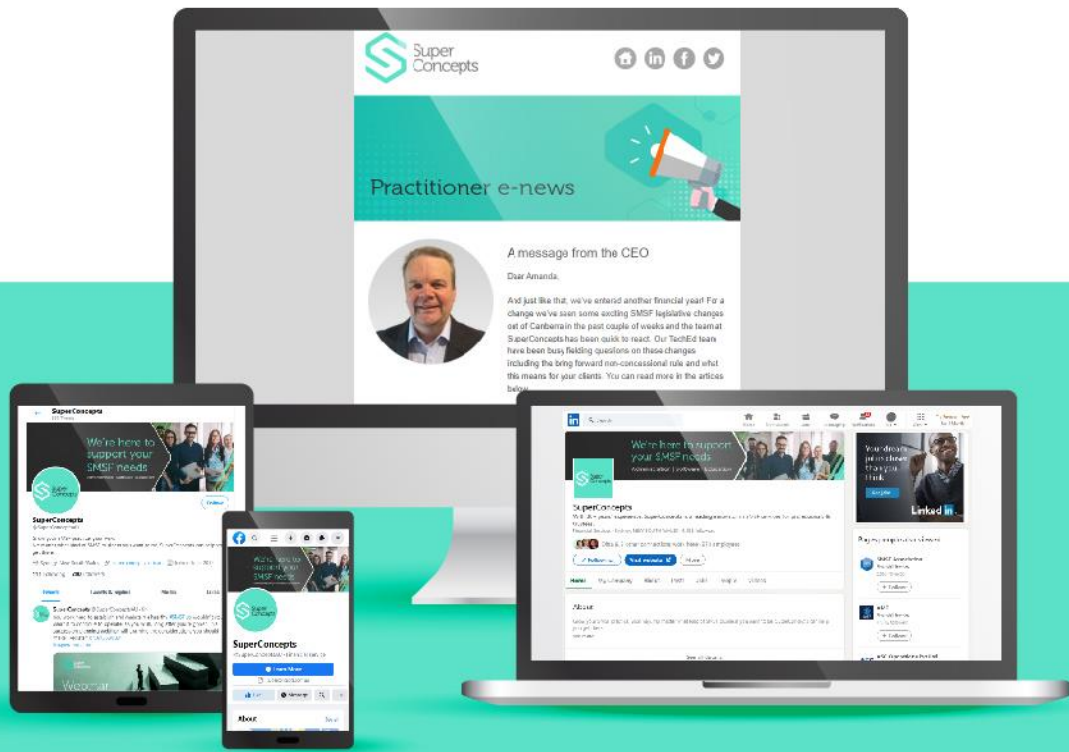
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