Go-To Guide

Superannuation death benefits

SMSF Association
Technical Team

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Key Advice Issues

This Go-To Guide provides an outline of the general rules in relation to the payment of superannuation death benefits, to ensure that SMSF trustees have a better understanding of the operation and interaction of:

- The regulatory requirements under the superannuation laws;
- The tax implications under the tax laws; and
- The governing rules of each fund as set out in the trust deed.

An awareness of the fundamental principles is important as the guide then addresses in detail how the transfer balance cap (TBC) impacts on SMSFs paying superannuation death benefits.

Since 1 July 2017, the introduction of the TBC has impacted the amount of capital that an individual can use to support an income stream in retirement phase. The TBC also applies to death benefit income streams although different rules apply to modify the TBC for a child beneficiary and for a reversionary beneficiary.

Where the recipient of a death benefit pension exceeds their TBC, they will be required to receive a lump sum death benefit. This in turn, limits the amount of money that can be retained within the superannuation environment following the death of a member. This represents a significant shift in relation to superannuation death benefits and estate planning, making it paramount to review all succession plans involving superannuation benefits.

The payment and tax treatment of death benefits paid from an SMSF to a deceased member's dependant or their estate has traditionally been a complex area, with the need to obtain advice from a specialist estate planning lawyer. Following the introduction of the TBC, the need for specialist advice is ever so important.

This Go-To-Guide should be read in conjunction with:

- Go-To-Guide: Transfer Balance Cap; and
- LCR 2017/3 Superannuation reform: Superannuation death benefits and the transfer balance cap

The term 'pension' is used throughout this Guide to refer to a superannuation income stream.[1]

Who can receive a death benefit

Subject to the underlying trust deed, which may be more restrictive about who a death benefit can be paid to, generally a SMSF trustee can pay a superannuation death benefit to one or both of the following:

- the member's legal personal representative (LPR), or
- one or more of the member's dependants.

[1] As defined in subsection 307-70(2) of the Income Tax Assessment Act 1997 (ITAA) 1997 by reference to regulation 995-1.01 of the Income Tax Assessment Regulations (ITAR) 2021.

The following table outlines the differences between the definition of a 'dependant' for superannuation and tax purposes. The superannuation definition determines who can receive a death benefit, whereas the tax definition determines how the death benefit is taxed.

Dependant	Super	Tax
Spouse (married, de facto, or same-sex)	Yes	Yes
Former spouse	No	Yes
Child under age 18	Yes	Yes
Child aged 18 or over	Yes	No
Financial dependant (including dependent adult child)		
- wholly dependant	Yes	Yes
- partially dependant	Yes	No
Interdependent relationship	Yes	Yes

It is important to highlight that superannuation death benefits do not automatically form part of the deceased member's estate. As a result, superannuation death benefits can only be dealt with in accordance with a deceased member's Will if and when the benefit is paid to the deceased member's LPR.

Where a death benefit is paid to a deceased member's LPR, and dealt with in accordance with the decease member's Will, there is no restriction on who can receive the death benefit. In fact, the member's Will can instruct an executor to pay a death benefit to any person even if they are not a dependant – however the tax payable in respect of the death benefit may be affected.

Cashing superannuation benefits on death

When a member dies, the trustee of an SMSF is required to 'cash' the deceased member's remaining superannuation entitlements (i.e. death benefits) as soon as practicable after the member's date of death. That is, death is a compulsory cashing[2] requirement.

Although the term 'as soon as practicable' is not defined, the ATO generally expects payment to be within six months of death unless the trustee can demonstrate valid reasons for the delay. For example, the trustee may be unable to identify eligible beneficiaries or is seeking legal advice in relation to the validity of a death nomination. It is less likely that the ATO will accept market downturn conditions as a valid reason for delaying the sale of assets to fund the payment of death benefits.

[2] Regulation 6.21 of the *Superannuation Industry (Supervision) Regulations 1994* (SISR)

‘Cashed’ includes paying the deceased member’s benefits as either a lump sum, as a pension or as a combination. One limited exception is where the deceased member’s benefits are rolled over as soon as practicable for immediate ‘cashing’ by the new superannuation fund.

The principal underpinning the cashing rules remains unchanged, however from 1 July 2017, the regulations will only be satisfied where a death benefit pension satisfies the definition of a retirement phase[3] superannuation income stream.

Death benefit lump sums

Where benefits are paid as a lump sum, the SMSF trustee can pay a single lump sum or alternatively, an interim lump sum and a final lump sum. Generally, an interim amount does not exceed the amount of the benefits ascertained at the date of death and a subsequent final lump sum accounts for the balance of a member’s benefits as they relate to their death e.g. insurance proceeds or investment returns.

The ability to pay a single lump sum, or an interim lump sum and a final lump sum, applies to each person to whom benefits are cashed. So, for example, if there were three persons to whom the deceased member’s benefit were to be paid as a lump sum, this would allow an interim and final benefit payment to be made for each person.

Further, the ATO view is that lump sum death benefits must actually be ‘paid’ to the beneficiary and that journal entries[4] in the accounts of the SMSF will not constitute a ‘payment’ to satisfy the cashing rules. Cashing necessarily involves the actual payment of cash or assets for the benefit of the beneficiary and means that the deceased member’s benefits are paid out of the superannuation environment.

For SMSFs with illiquid assets, the in-specie transfer of fund assets, at arms-length, to a dependant could be considered.

Death benefit pensions

Where permitted by the SMSF’s trust deed, the trustee can also pay one or more death benefit pensions.

From 1 July 2017, a death benefit pension must satisfy the definition of a retirement phase income stream. For example, a trustee of a SMSF would not be able to pay a death benefit pension as a new transition to retirement income stream (TRIS).

Where a TRIS becomes payable to a reversionary beneficiary, following the death of the primary pensioner, the rules that determine when a TRIS is in retirement phase were modified to ensure that the reversionary TRIS is treated as a retirement phase income stream[5]. Prior to this modification, on the death of the primary pensioner, the TRIS could not have reverted to a reversionary beneficiary who had yet to meet a condition of release with a nil cashing restriction, as the TRIS would not have been in retirement phase and the cashing rules would not have been met. For

[3] Section 307-80 ITAA 1997 by reference to regulation 995-1.01 of the ITAR 2021

[4] *ATO ID 2015/23 Superannuation: Member’s benefits in a regulated superannuation fund must be ‘cashed’ upon death by being paid – mere journal entries insufficient*

[5] Paragraph 307-80(3)(aa) ITAA 1997

more information on how a TRIS is treated for TBC purposes please refer to the SMSF Association's Consolidated Go-To Guide.

Where a death benefit pension in retirement phase is paid, the deceased member's benefits stay in the superannuation environment and the compulsory cashing requirement continues to be met for as long as the pension continues to be paid.

Although the payment of a death benefit pension may overcome any immediate liquidity concerns for SMSFs with lumpy assets, the trustee will need to ensure it has liquid assets to make regular pension payments. Noting that pension payments, including those made from a death benefit pension, cannot be paid in-specie.

Since 1 July 2007, there are additional restrictions where the dependant is a child of the deceased. That is, a trustee is unable to pay a death benefit pension to a deceased member's child aged 18 or older, unless the child:

- Is under age 25 and financially dependant on the deceased member, or
- Has a permanent disability.

Further, unless the child has a permanent disability, the trustee must:

- Stop paying the income stream on or before the child turns 25, and
- Pay any remaining benefits to the child as a tax-free lump sum.

Where any death benefit pension is partially or fully commuted, the resulting lump sum must be 'cashed'. That means that the commutation lump sum amount must either be withdrawn from the fund or used to fund a new death benefit pension. The cashing requirements will not be satisfied if the commuted benefits stay in the accumulation phase. This was confirmed by the ATO in *Law Companion Ruling (LCR) 2017/3 – Superannuation Reform: Superannuation death benefits and the transfer balance cap* which provides clarity on the ATO's interpretation of the cashing rules.

Since 1 July 2017, it is possible to commute a death benefit pension and roll over the amount to a new superannuation provider. However, the rolled over amount retains its death benefit status, so in order to satisfy the cashing rules, the new trustee must commence a new death benefit pension or pay the amount as a lump sum. Prior to this date, a death benefit pension could not generally be rolled over.

Although death benefits can now be transferred to a beneficiary's choice of fund, the rolled over death benefits cannot be retained in accumulation phase or mixed with the beneficiary's own superannuation interest. In the context of an SMSF, an internal transfer of monies will also be treated as a rollover. Therefore, SMSF trustees will be required to treat any amount commuted from a death benefit pension as a separate interest, until such time as it is paid out of the SMSF as a lump sum death benefit or a new death benefit pension is commenced. This ensures that the amount is not mixed up with a beneficiary's other superannuation entitlements. It also means that the proportioning rules continue to apply to ensure that the tax free and taxable components just prior to rollover are retained on receipt of the lump sum or commencement of a new death benefit pension.

Practical Compliance Guideline (PCG) 2017/6

For death benefit pensions which were commuted and rolled over prior 1 July 2017, the ATO released *PCG 2017/6 – Superannuation reform: commutation of a death benefit income stream before 1 July 2017* to outline its compliance approach with respect to the cashing rules. This PCG was in recognition that until such time as LCR 2017/3 was published, there was little clarity on whether or not a death benefit pension could convert to a member benefit if commuted after the latter of 6 months of death or 3 months of probate (or otherwise referred to as the 'prescribed period'[6]).

From 1 July 2017, this prescribed period was abolished. With the publication of PCG 2017/6 the ATO has confirmed that it will not apply compliance resources to review whether a SMSF has complied with the compulsory cashing requirements with respect to a death benefit where:

- the member of the SMSF was the spouse of the deceased on the deceased's date of death. The concession is limited only to a surviving spouse, and

- the commutation and roll-over of the spouse's death benefit pension was made before 1 July 2017. The relief includes death benefits rolled over internally within the same SMSF or rolled over to a new superannuation provider, and

- the resulting lump sum commutation amount is a member benefit for income tax purposes because generally it was paid after the prescribed period. Please note that this may have imposed limitations on the relief where members had only recently died as at 30 June 2017.

This relief from the ATO was a once off opportunity for those already in receipt of a death benefit pension prior to 30 June 2017 to enable a beneficiary to leave any excess over their TBC within the superannuation system, albeit in accumulation phase.

Taxation of superannuation benefits on death

The tax treatment of a superannuation lump sum death benefit relies on whether the recipient is a death benefits dependant [7] of the deceased member.

Broadly, a death benefits dependant of a member who has died is:

- The deceased member's spouse or former spouse,
- The deceased member's child, aged less than 18, or
- Any other person with whom the deceased was in an interdependency relationship with just before they died, or
- Any other person who was a dependent of the deceased just before they died.

Lump sum death benefit			
Beneficiary	**Tax-free component**	**Taxable component (Taxed element)**	**Taxable component (Untaxed element)**
Dependant	Tax-free	Tax-free	Tax-free
Non Dependant	Tax-free	Taxed at maximum 15% (plus Medicare)	Taxed at maximum 30% (plus Medicare)

[6] Subsection 307-5(3) ITAA 1997 – repealed from 1 July 2017
[7] Section 302-195 ITAA 1997

On the other hand, where a superannuation death benefit is paid as a pension, the tax treatment of pension payments will be determined based on the age of the deceased member and/or the beneficiary, as outlined in the table below:

Death benefit pension				
Age of deceased	**Age of beneficiary**	**Tax-free component**	**Taxable component (Taxed element)**	**Taxable component (Untaxed element)**
60 or older	Any age	Tax-free	Tax-free	Taxed at MTR* (plus Medicare). *Less:* 10% tax offset.
Under age 60	60 or older	Tax-free	Tax-free	Taxed at MTR* (plus Medicare). *Less:* 10% tax offset.
	Under age 60	Tax-free	Taxed at MTR* (plus Medicare). *Less:* 15% tax offset.	Taxed at MTR* (plus Medicare). No tax offset.

* MTR = Marginal Tax Rate

Anti-detriment payments

Prior to 1 July 2017, on the death of a member, the anti-detriment provisions (also referred to as a ‘tax saving amount) enabled a trustee to claim a deduction for any top-up payment made to an eligible beneficiary as part of a death benefit lump sum. The top-up amount was essentially a refund of contributions tax paid by the SMSF over the deceased member’s lifetime.

This provision was abolished from 1 July 2017 and super funds, including SMSFs, can no longer claim this deduction where a member died on or after 1 July 2017.

Transitional rules applied until 30 June 2019 which allowed a fund to pay an anti-detriment benefit as part of a death benefit lump sum where the member died prior to 1 July 2017. Where an anti-detriment amount was paid by an SMSF trustee, there were several practical limitations that trustees needed to be aware of, including but not limited to the following:

- To claim the deduction, the fund was required to pay a lump sum death benefit, resulting in a withdrawal of the deceased member’s benefits from the concessionally taxed superannuation environment. Depending on the beneficiary, there may have been restrictions on recontributing the amount back to super.
- Any anti-detriment top-up payment made could not have been sourced from the deceased’s member account, so funding the top-up payment often caused difficulties for SMSFs.
- Any anti-detriment payment had to have been paid in full and needed to have been calculated based on the amount of the lump sum death benefit. Partial payments were not allowed and trustees instead needed to revise the amount of the lump sum death benefit.

In recognition that a deceased member's final death benefit payment amount is not immediately known, the ATO did allow the payment of a death benefit lump sum as an interim and a final (that is in two payments) and determined that it was possible to attach an anti-detriment amount to either of these two payments.

Transfer balance cap and death benefits

An individual's transfer balance cap (TBC) places a limit on the amount that they can transfer into the retirement phase over their lifetime.

Over time, due to indexation, the general TBC has increased as follows:

- 1 July 2017 – introduced at $1.6 Million,
- 1 July 2021 – indexed to $1.7 Million, and
- 1 July 2023 – indexed to $1.9 Million.

Generally speaking, when a member first commences a retirement phase pension the ATO creates a transfer balance account (TBA) for the member which, similar to a bank account, tracks credits (increases) and debits (decreases) to their TBA.

The member's TBA displays the member's current TBA balance which can be used by members to determine their remaining cap space. It is important to note shifts in the underlying pension asset values, income earnt on these assets, and pension payments, do not give rise to either a TBA credit or debit.

Where a member dies, their TBA dies[8] with them. In essence, a deceased member's TBA is not inherited by a dependant, not even a surviving spouse. Similarly, when a deceased member's benefits are cashed as a lump sum, there is no impact to either the beneficiary's, nor the deceased member's, TBC.

Where a deceased member's benefits are cashed as a death benefit pension, there will be an impact on the recipient beneficiary's TBC. This also applies where a deceased member's pension automatically reverts to a reversionary beneficiary (including a surviving spouse). For example, a surviving spouse, who receives a death benefit pension will have its value added to their TBA. That is, a death benefit pension will always result in a credit to the recipient's TBA.

The value and timing of the credit will depend on whether the death benefit pension is a reversionary pension or not. For more information on calculating the values reported for TBC purposes, please refer to the SMSF Association's Go-To Guide on the Transfer Balance Cap.

Where the death benefit pension is not reversionary, the 'credit' arises on the day the beneficiary becomes entitled to the death benefit pension. This is generally when the trustee determines to pay the pension and the beneficiary starts being paid the death benefit pension. The value of this credit is the starting value on the date the pension commences.

An exception being where a member was entitled to a non-reversionary death benefit prior to 1 July 2017, as the credit arose on 1 July 2017. In this case, the value of the credit equals the value of the income stream at the end of 30 June 2017.

[8] Section 294-45 ITAA 1997

Included in the value of the credit for such a non-reversionary death benefit pension are any investment earnings that accrue between the date of the member's death and the date the pension becomes payable. Also included are any other amounts the trustee decides to pay as a death benefit pension, including insurance proceeds or allocations from reserves to the deceased member's interest.

Special rules apply to reversionary pensions which result in a delay to the credit arising in the beneficiaries TBA. This allows the beneficiary a grace period to plan and manage any excess appropriately. This will be discussed later in this Guide.

Special rules also operate to modify the TBC of a child who receives a death benefit pension. In essence, children are given a special cap increment to ensure that their personal TBC is not exhausted. A child's TBC increment will differ depending on whether their deceased parent had a TBA at their time of death. This is discussed in greater detail later in this Guide.

Where a death benefit pension causes a beneficiary to exceed their TBC, the recipient will have an excess TBC amount. Any excess death benefit will need to be paid as a lump sum death benefit and cannot be retained within the superannuation environment.

To reduce any excess transfer balance, a beneficiary can choose to either:

- commute some or all of the death benefit pension, or
- if they have one, commute some or all of any retirement phase pension they are already receiving.

Where the commutation is made from the death benefit pension, in order to satisfy the cashing rules, the commuted amount cannot be retained in superannuation. On the other hand, where the commutation is made from the beneficiary's existing retirement phase pension, the amount can be retained as an accumulation interest.

Careful planning is required where a dependant is already in receipt of a pension and has an established TBA to limit accruing any excess transfer balance earnings and applicable tax. Where possible, to avoid accruing any tax, a beneficiary should consider commuting their own pension prior to the transfer balance credit arising in their TBA as a result of receiving a death benefit pension.

The full or partial commutation of a beneficiary's own pension will give rise to a 'debit' in their TBA, freeing up the required cap space for them to receive a death benefit pension. Upon paying the death benefit pension to the beneficiary, the trustee can:

- Maximise the amount of benefits remaining in the concessionally taxed super environment; and
- Minimise the amount of death benefits that must be paid to the beneficiary as a lump sum.

For example, Jason dies with a pension account worth $1.8m and wants his benefits to be paid to his wife, Jasmine. Jasmine already has a pension which is valued at $1m and a TBA of $800k.

On 1 July 2021 and subsequently on 1 July 2023, Jasmine's personal TBC has benefited proportionately from the indexation of the general TBC. Her personal TBC was $1.75m on 1 July 2023.

As Jason's pension is not reversionary, the death benefits pension would be payable from the time the trustee determines to pay the death benefit. Let's assume this is 6 months after death at which time the pension is valued at $2m. At this time, Jasmine would have a credit to her TBA to the value of $2m. In conjunction with her existing TBA balance of $800k, Jasmine would have a TBA valued at $2.8m and therefore an excess of $1.05m. Jasmine would be liable to excess transfer balance tax and be required to:

a) Partially commute the excess from her death benefit pension as soon as possible plus any excess transfer balance earnings to reduce her transfer balance below her TBC. This amount would retain its death benefit status and the trustee would be required to pay it as a lump sum death benefit to Jasmine, or

b) Fully commute her pension valued at $1m back to accumulation phase and partially commute the balance of the excess (including any excess transfer balance earnings) from her death benefit pension. The partial commutation from her death benefit pension would still retain its death benefit status and the trustee would be required to pay it to Jasmine as a lump sum death benefit. This option retains an extra $1m in the SMSF with only approximately $50k leaving the concessionally taxed environment as a tax-free lump sum death benefit.

Alternatively, before the death benefit pension commences to be paid to her, Jasmine could fully commute her pension valued at $1m back to accumulation phase. This would give rise to a debit in her TBA resulting in a negative TBA of $200k. This in essence creates cap space to the total value of $1.95m.

Jasmine could subsequently receive a death benefit pension totaling $1.95m. The remaining $50k of Jason's death benefit would still be in excess of her personal transfer balance cap and need to be withdrawn from the SMSF as a lump sum. By commuting her pension prior to the commencement of the death benefit pension, Jasmine can avoid excess transfer balance earnings and excess transfer balance tax.

TBC modifications for reversionary pensions

The general TBC rules are modified in relation to reversionary pensions to change when a death benefit pension is 'credited' to the dependant beneficiary's TBA.

Reversionary pensions are different to other death benefit pensions because they immediately revert to the beneficiary on the death of the member. That is, the reversionary beneficiary is automatically entitled to the pension on the death of the original pensioner. However, the compulsory cashing rules as they relate to any pension payable on death still apply. Therefore, to satisfy the cashing rules, the reversionary pension must be a retirement phase income stream.

The ATO's view on what constitutes a reversionary pension is outlined in LCR 2017/3 and confirms that a death benefit pension will not be reversionary where a fund's trustee has any discretion or power to decide:

- which beneficiary is entitled to receive the death benefit,
- how to 'cash' the deceased member's benefit (pension v lump sum), or
- the death benefit amount to be paid.

Typically, a reversionary beneficiary should be specifically identified at the commencement of the original pension. This is particularly relevant for non-account based pensions where the relevant life expectancy of the reversionary pensioner is factored into the pension at the start. However, for account based pensions, while the law is silent on this particular point, it is generally accepted that a reversionary pensioner can be added to an existing pension without the pension ceasing, if the SMSF's governing rules allow it.

Guidance from the ATO is provided in [TR 2013/5 Income Tax: when a superannuation income stream commences and ceases] that the trust deed and the rules of the pension must specify both the person to whom the benefit will be paid and the form of the benefit, being a reversionary pension. The ATO has also stated in LCR 2017/3 that a binding death benefit nomination (BDBN), on its own, will not be sufficient to make a pension reversionary. BDBNs are discussed later in greater detail.

Where the death benefit pension is reversionary, the date of death of the original pensioner is when the death benefit pension becomes payable to the beneficiary. The value of the original pension as at the date of the member's death is the amount of the credit that will be tested against the beneficiary's TBC. This value does not include additional amounts the trustee decides to pay as a death benefit pension or any investment gains accrued after the date of death. Therefore:

- Where market conditions are strong and assets grow, the reversionary beneficiary will benefit from assets valued above the corresponding value of the 'credit' in their TBA, and

- Where the market is on the decline, the reversionary beneficiary can expect an adverse impact on their TBA as the value of the 'credit' will be greater than the value of the assets supporting their reversionary pension.

The only valuation exception is where a member was entitled to a reversionary death benefit prior to 1 July 2017 as the amount of the credit is the value of the death benefit pension at the end of 30 June 2017.

However, there are special rules that apply to modify the reversionary beneficiary's TBC, in particular the timing of when the death benefit pension is credited to their TBA.

The rules that apply are:
- Where the reversionary beneficiary was entitled to the income stream before 1 July 2017 then the credit arose on the later of:
    - 1 July 2017; or
    - At the end of the period 12 months from the date of the original pensioner's death.

For example, a member dies before 1 July 2016 and his pension automatically reverts to his wife, a credit would have arisen in her TBA on 1 July 2017. However, if the member had died on 1 November 2016, then the credit to the wife's TBA would not have arisen until 1 November 2017.

- Where the original pensioner dies after 30 June 2017, the credit to the reversionary beneficiary's TBA arises 12 months from the member's date of death.

This deferral provides the beneficiary sufficient time to seek advice on how best to minimise any excess TBC.

For example, Sam dies with a pension account worth $1.8m and nominates his wife Alison as the reversionary pensioner. Alison already has a pension valued at $1m and a TBA of $800k. Her personal TBC on 1 July 2023 is $1.75m.

Sam's pension automatically reverts to Alison so it will be payable immediately from his date of death. A year after his death, the pension is now worth $2m. However, the credit to Alison's TBA will equal the value of Sam's pension at his date of death (that is $1.8m).

This credit of $1.8m in Alison's TBA will create an excess of $850km so before the 12 months.

Alison could fully commute her existing pension valued at $1m back to accumulation. This would give rise to a debit in her TBA resulting in a negative TBA of $200k. This in essence creates cap space to the total value of $1.95m.

As the value of the credit relating to the reversionary pension is determined at the date of death, Alison could now receive all of Sam's benefits as a reversionary pension. She would have no excess benefits. Furthermore, no benefits (his or hers) have had to be withdrawn from the concessionally taxed superannuation environment.

While the credit that arises for the reversionary beneficiary is delayed by 12 months, the following must not be overlooked:

- In order to ensure that the pension continues, the trustee of the SMSF will need to ensure that the minimum pension standards continue to be met, including the need to pay the minimum annual pension amount in the year the original pensioner dies. The minimum pension amount is not recalculated on the date of death although the trustee will need to recalculate on the following 1st of July.

- Depending on the age of the reversionary beneficiary, there may be income tax consequences of any pension payments received by the beneficiary.

- Where the reversionary income stream is a defined benefit income stream, any pension payments received will be assessed against the beneficiary's defined benefit income cap.

- The proportions of tax-free and taxable components continue to reflect those as at the commencement of the original deceased member's pension. Any earnings or capital growth on the assets supporting the reversionary pension are allocated in those proportions with no need for a recalculation.

- The trustee continues to claim exempt pension income on earnings generated by the fund's assets supporting the reversionary pension from the date of death of the original pensioner. The pension does not cease unless the reversionary pensioner commutes the pension. As the beneficiary has up to 12 months to restructure, it is possible for the original pension to stay in 'retirement phase' and benefit from the exemption for up to 12 months before the beneficiary needs to restructure to manage their TBC.

- The impact that a reversionary pension may have on any Government benefits the beneficiary is entitled to.

It is important to reiterate that there is no 12-month deferral period for pensions that do not automatically revert to a beneficiary or where the death benefit pension is funded by the deceased's accumulation interest. As discussed earlier these situations result in a credit arising on the day that the new pension starts being paid to the beneficiary.

TBC modifications for child death benefit pensions

The first question to be considered by any SMSF trustee before commencing to pay a death benefit pension to a child is whether the child satisfies the definition of a dependant.

The next matter is the form of payment to the child upon the death of a parent. Where the child receives a lump sum death benefit, the tax consequences remain unchanged.

Similarly, where the child receives a death benefit pension, the rules remain unchanged – that is, for example, unless the child recipient has a permanent disability, they will be required to commute the death benefit pension once they turn 25 and withdraw the money from superannuation in order to meet the cashing rules. However, the trustee will need to determine the TBC impacts of paying a death benefit pension.

To ensure that children do not exhaust their own personal TBC when they receive a death benefit pension, the normal transfer balance rules apply, however the child's TBC is modified. That is, the child's TBC in relation to a death benefit pension from a deceased parent is modified to reflect only the child's portion or increment of the deceased parent's retirement phase interest.

Where both parents die, the child's cap increment is the sum of the increments as calculated for each parent. Once the child's special TBC ceases (either because they have exhausted their pension capital or turned age 25) their TBC is reset to the general TBC at the time they subsequently retire.

Where a child beneficiary is already in receipt of an income stream, such as a disability pension, the child will have their own personal TBC, and this does not affect the calculation of any TBC increment with respect to a death benefit pension. For example, on the death of one or more parent, the child may effectively have up to three TBCs. The child's personal TBC is disregarded when it comes to determining their eligibility to receive a death benefit pension. Equally, any death benefit pension and related TBC increment is disregarded when determining the child's proportional indexation of their general TBC.

Child death benefit commenced prior 1 July 2017

Where a child was receiving a death benefit pension prior to 1 July 2017, the child's TBC increment is simply $1.6m. That means that the child beneficiary could receive up to $1.6m without exceeding their modified TBC.

Child death benefit commenced after 1 July 2017

Where a child receives a death benefit pension any time after 1 July 2017, the application of the modified cap differs depending on whether or not the deceased parent had a TBA on death. That is, whether the deceased parent was receiving a retirement phase income stream at their date of death.

If the deceased parent did not have a TBA at their date of death, the child beneficiary's cap increment is simply the general TBC. However, rules apply to ensure that any cap increment must be shared amongst all beneficiaries in the same proportion as their entitlement to the deceased member's superannuation interest. For example, if a child is the sole beneficiary, their cap increment will be the full general TBC at the time. However, if the child is one of four beneficiaries of the deceased parent's superannuation interest, their cap increment will only be 25% of the general TBC at the time.

Where the deceased parent had a TBA at the time of death, only a child's death benefit pension funded from the deceased parent's retirement phase income stream can benefit from a cap increment. In these situations, the deceased member's TBA is still relevant even where their pension assets may be exhausted before they pass away. The application of the cap rules will depend on whether the child's death benefit pension is sourced from the deceased parent's accumulation interest or their retirement phase interest. For example:

- Where the death benefit pension is sourced from the deceased parent's accumulation account, the cap increment will be nil. This is irrespective of the balance in the parent's TBA or if the parent has simply exhausted all their pension capital prior to death. The entire amount received by the child will be considered to be excess and cannot be paid as a death benefit pension.

- Where the death benefit pension is sourced from the deceased parent's retirement phase interest, the child's cap increment will equal the amount of the parent's pension account balance or the portion of that interest that the child is entitled to. This is irrespective of whether or not it exceeds $1.9m. This amount also includes income earned on the retirement phase interest assets after the death of the parent and prior to the commencement of the child non-reversionary death benefit pension. Where the death benefit pension is reversionary, the child will benefit from the 12-month deferral of the credit.

For example, granddad dies at the age of 68 and nominates his 2 financially dependent grandchildren as equal beneficiaries of his superannuation benefits. His superannuation benefits include $200k left in his pension and $1.2m in accumulation at his date of death. As grandad had a TBA, only a death benefit pension funded from his pension account will give rise to a proportional cap increment to each grandchild. Therefore, each child would only get a cap increment of $100k and can receive a death benefit pension of equal value. The accumulation benefits would need to be cashed out as a lump sum death benefit to the value of $600k to each grandchild.

- Where the death benefit pension is sourced from the deceased parent's retirement phase interest but at the time of death the parent had an excess transfer balance, the child cap increment will be reduced by the child's share of the parent's excess amount. This effectively reduces the amount of the deceased parent's retirement phase interest and how much can be paid as a death benefit pension.

For example, on 1 July 2023 a parent starts a pension with an amount of $2.1m but dies shortly after. Upon death, the pension automatically reverts to the child. The child's increment will be $2.1m less the $200k excess, reducing the child's modified cap to $1.9m. Therefore, before the 12-month period from the parent's date of death, the child will need to partially commute $200k from the reversionary pension and withdraw the benefits from superannuation as a lump sum death benefit.

- Where the death benefit pension is only partly sourced from the deceased parent's retirement phase interest the child cap increment will need to be adjusted to reflect only the part funded from the retirement phase interest. For example, where a deceased parent's account is increased post death due to insurance proceeds or transfers from a reserve, and these amounts are treated as forming part of the accumulation interests of the deceased parent, this will require an adjustment to the cap increment.

For example, upon death a parent had $1m in pension phase as well as a life insurance policy held by the SMSF to the value of $250k. Upon receipt of the insurance proceeds, valued at $250k, they formed part of the deceased parent's accumulation account. In this situation, only a child pension of $1m can be paid, with the remaining $250k paid out as a lump sum death benefit to the child.

In most cases, it is expected that since the introduction of the TBC on 1 July 2017, less superannuation can be paid to a child as a pension on the death of a parent. It is also anticipated that where a parent dies with both accumulation and pension benefits, trustees are more likely to opt to pay the retirement phase interest to the child as a death benefit pension and the accumulation benefits to an alternative dependant such as a spouse.

Allowing the fund trustee(s) maximum flexibility on how best to structure child death benefit pensions could be the preferred strategy into the future. Similarly, paying a death benefit to a testamentary trust may be a more popular option going forward, as the trustee of that trust will be able to distribute the trust's assets and income to its child beneficiaries as needed. We strongly suggest that any estate planning strategies involving child death benefit pensions be reviewed by a SMSF Specialist.

Administrative Issues

The SMSF's trust deed

Above we have outlined in detail the rules as contained within the superannuation laws and tax laws. However, the underlying trust deed for each and every SMSF is critical when dealing with the payment of death benefits. SMSF trustees need to be across the detail in their trust deed as it is possible to have a trust deed that imposes additional requirements on the payment of a superannuation death benefits or is less flexible than the law.

Typically, most SMSF trust deeds afford the trustee a wide discretion to determine how death benefits should be paid. However, where there is the potential for disagreement amongst beneficiaries or those controlling the SMSF the trustee's discretion may be removed by specifically drafting deed provisions or more commonly by implementing a reversionary pension or executing a binding nomination.

If a member dies and the trustee, despite their reasonable effort, has been unable to find either a LPR or a dependant, the trustee may, subject to the trust deed, cash the member's benefits in favour of another individual. The trustee's decision must be fair and reasonable and general legal recourse is available to SMSF beneficiaries.

Given the significant shift in the landscape with respect to SMSFs and death benefits, we strongly recommend that trustees have their deeds reviewed to ensure maximum flexibility when dealing with excess TBC amounts, rollover of death benefits, reversionary pensions and child pensions.

Control of the Fund

Critical to ensuring a member's wishes are implemented on their death is the 'control' of the SMSF. The law does not dictate how control of the SMSF is passed on but reference to the trust deed typically provides the appropriate guidance.

One's Will is also very important as it determines who becomes the Executor of the deceased individual's estate, which in turn is the LPR that is permitted to step into the shoes of the deceased member as trustee of the SMSF. However, the LPR is not an automatic appointment and depends on the terms and conditions of the SMSF's deed.

Where the SMSF has a corporate trustee, there may be an additional layer of control that needs to be considered with respect to the directors. However, as the company does not change as a result of the death of a member there are fewer administrative costs on the death of the member.

Binding death benefit nominations (BDBNs)

A BDBN provides binding instructions nominating who should receive a deceased member's superannuation interest.

As the name suggests, a BDBN is binding on the trustee, whoever they may be. However, a BDBN will only be effective if the nominated person is an eligible beneficiary under the superannuation laws.

Where a member has executed a BDBN, the trustee needs to check the SMSF’s trust deed and nomination to ascertain whether the nomination is accordance with the terms of the particular SMSF trust deed. This is because the *Superannuation Industry (Supervision) Act 1994* specifically excludes the operation of the BDBN clauses in that Act from applying to an SMSF. Thus, the terms of the BDBN are to be found exclusively in the trust deed of the SMSF and must be followed exactly for the nomination to be binding on subsequent trustees.

It is therefore prudent for the member to regularly review a BDBN to ensure their nomination is current at all times and drafted within the terms of the trust deed of the SMSF. Care should particularly be taken when an update of the trust deed is executed. At these times, a new BDBN should be executed in accordance with the new trust deed clauses.

Whether a BDBN is appropriate depends on the member’s individual circumstances. For example, a BDBN may be appropriate to direct benefits straight to a beneficiary where it is likely that the estate of the deceased member will be challenged. Alternatively, a BDBN may not be considered appropriate where a beneficiary is going through a marriage split or bankruptcy, where it may be preferable to have the flexibility to pay benefits to the deceased member’s estate.

A common question is whether a valid BDBN overrides a valid reversionary pension. As the law is silent on this issue, the trustee must consult the SMSF’s trust deed which may expressly specify that one takes precedence over the other. Where the trust deed is silent, the prevailing view is that a reversionary pension will take precedence as the pension automatically transfers to a beneficiary and does not form part of the deceased’s death benefits which are dealt with under a BDBN. That is, the BDBN deals with other superannuation assets of the deceased member which are not supporting the reversionary pension.

Note, a member could also make a non-binding nomination whereby the trustees are not compelled to follow the member’s wishes. In essence, the trustee can still determine which of the deceased member’s dependents and/or LPR can receive a death benefit.

Member’s Will

As mentioned earlier, a SMSF trustee can pay a member’s superannuation benefits to a deceased member’s LPR (that is their estate) so it is always recommended that a member’s Will be reviewed as part of any superannuation estate plans.

Where a death benefit is paid to a legal personal representative as executor of an estate, tax does not have to be withheld by the SMSF trustee. Instead, it essentially becomes the executor’s responsibility to withhold the appropriate level of tax from any subsequent lump sum death benefit paid to a non-tax dependant. Further, Medicare levy will not be payable on any subsequent lump sum death benefit paid to a non-tax dependant.

It is important to understand that once superannuation death benefits are paid to a member’s estate, the monies are pooled with all the member’s other assets. Any challenge made to the estate by an unhappy beneficiary may jeopardise the distribution of superannuation benefits to the member’s intended beneficiary.

SMSF investment portfolio

It is not uncommon for SMSF trustees to invest in 'lumpy' assets such as residential and commercial property. For these SMSFs, the trustee must always factor in liquidity of assets when reviewing its investment strategy but upon the death of a member, the inherent problems associated with lumpy assets could be magnified.

Traditionally, estate planning for SMSFs with lumpy asset involves the surviving spouse (or other dependant) starting a death benefit pension, allowing the trustee to continue to own the asset. With the introduction of the TBC limiting the amount of capital that can be retained in superannuation following the death of a member, this strategy may not always be viable.

Matters for an SMSF trustee to consider in these scenarios include, although are not limited to:

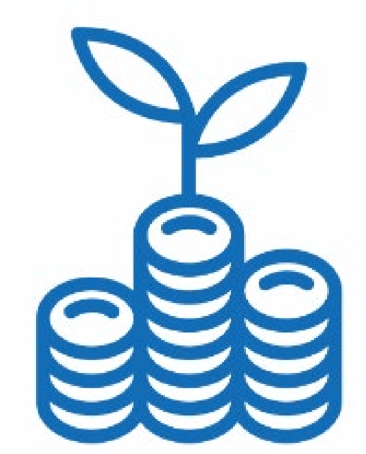
- Where the deceased member's benefits are paid as a death benefit pension, the SMSF will have an obligation to make regular minimum pension payments to the recipient. As mentioned earlier, pension payments cannot be paid in-specie.

- Where the deceased member's benefits exceed the recipient's TBC, the excess must be withdrawn from the superannuation environment in order to meet the cashing rules. The lump sum must actually be 'paid' which will either involve an in-specie transfer of the lumpy asset or its sale.

- Where the deceased member was not in receipt of a pension and dies, any superannuation benefits which need to be withdrawn from the SMSF could give rise to an additional liability if capital gains tax is payable. A capital gains tax event will be triggered regardless of whether the trustee sells the asset or transfers it in-specie to a beneficiary.

- An additional complexity is where the SMSF has a limited recourse borrowing arrangement in place to finance some of these assets as the fund will also need to consider its ability to continue to service the loan alongside its requirement to cash the deceased member's benefit.

Finally, in terms of the fund's investment strategy, the use of life insurance policies to provide a death benefit through superannuation for a spouse may need to be reconsidered under the TBC rules, especially for fund members who are some way off from retirement. This is because a large life insurance policy, that may fund a death benefit pension for the surviving spouse, will use up their TBC long before they reach retirement. Alternatively, a death benefit lump sum can be paid to avoid TBC issues. Accordingly, the balance of using life insurance inside and outside of superannuation should be re-evaluated in light of the TBC limitations.



SMSF death benefits checklist

- Has the trustee reviewed the trust deed with respect to what happens upon the death of a member?
- Has the member carefully considered who will control their SMSF upon their death?
- Does the fund trustee/member understand who can be the recipient of a superannuation death benefit?
- Does the fund trustee/member understand that a deceased member's superannuation benefits must be cashed upon their death as either a lump sum and/or a pension?
- Does the fund trustee/member understand the tax consequences of paying a death benefit lump sum and/or death benefit pension?
- Has the fund invested in insurance policies and/or reserves to fund the payment of death benefits?
  - → Be aware of the abolishment of the anti-detriment provisions
- Does the fund trustee/member understand the transfer balance cap impacts in relation to death benefit pensions?
  - → Was a death benefit pension already being paid on 1 July 2017?
  - → Is the death benefit pension a retirement phase income stream?
  - → Accurately calculate the value of a TBA 'credit'
  - → Ensure accurate and timely TBAR reporting
- Does the fund trustee/member understand what a reversionary pension is and how the recipient's TBC is modified?
  - → Review the trust deed and pension rules
  - → Accurately calculate the TBA 'credit' and report accordingly
- Does the fund trustee/member understand the impact of the TBC on child death benefit pensions?
  - → Understand how to calculate the child's special cap increment
  - → Understand the impact on the child's personal TBC (if any)
- Has the fund trustee/member regularly reviewed the trust deed and any binding death nominations to ensure members' directions upon death can be actioned?
- In reviewing the SMSF's investment strategy has the trustee considered the liquidity of assets in the event of the death of a member and insurance strategies?

Case Studies

Reversionary pensions

In July 2017, Alice was 61 and started an ABP with $1.6m. Jack, her husband was 64 and had an ABP valued at $1.5m on 30 June 2017. Jack died in July 2023 at which time his pension was valued at $2m and Alice's pension was valued at $1.5m. The following 3 options are available to Jack and Alice:

- Reversionary nominations to each other;
- Non-binding nominations to each other; or
- Binding nominations in place.

Scenario 1 - Reversionary nominations
Jack's pension automatically reverts to Alice. Alice has 12 months to decide what to do as she cannot retain the entire death benefit in pension phase, having already used up her personal TBC.

To avoid having to cash the entire $2m death benefit as a lump sum, Alice could fully commute her own pension back to accumulation. The commutation would result in a debit to her TBA, freeing up $1.5m of her cap space to use to receive a death benefit pension.

Before July 2024 (that is within 12 months of Jack's death) Alice fully commutes her own pension to ensure she does not exceed her TBC. As a result, she is able to retain $1.5m of Jack's death benefit as a pension in the superannuation environment, in addition to her $1.5m now in accumulation phase. The remaining death benefit of $500k is excess and the trustee will need to pay this to Alice as a lump sum death benefit.

Alice is on the highest MTR so investing the $500K in her personal capacity may not be the most effective tax outcome. Alice may consider contributing some back to super, subject to the contribution caps.

Scenario 2 - Non-binding nominations
Upon Jack's death, the trustee must seek to pay out his death benefit as soon as practical. As Alice now has control of the SMSF and Jack's death benefit nomination is not binding, upon seeking specialist advice she exercises her discretion to pay Jack's death benefit as follows:

- $1.5m to her as a death benefit pension. As above, Alice fully commutes her own pension to create cap space before she receives the death benefit pension to ensure she does not exceed her TBC, and
- $500K to Jack's LPR, as Jack's Will provides for an optional testamentary trust to be set up with the proceeds. This provides flexibility to stream the income and capital from the trust to his children and grandchildren.

Scenario 3 - Binding nominations
If Jack had a binding nomination in place, which resulted in Alice receiving Jack's benefits as a pension, the outcome would be similar to scenario one. However, there would not be a 12-month deferral period before the death benefit pension would count as a credit towards Alice's TBC. Rather, the credit would arise on the commencement of the death benefit pension, whenever that occurs.

In order for the nomination to be binding, at a minimum, Jack's nomination would need to clearly state Alice as the beneficiary as well as the proportion of the benefit she is entitled to.

Child pensions

Scenario 1 – Single cap increment
Jason died on 31 August 2023 with accumulation benefits totaling $2.5m in his SMSF. He had a BDBN directing his superannuation interest as follows:

- Suzi (spouse) – death benefit pension worth $1.5m (60% of deceased's superannuation interest).
- Tiffany (14 year old daughter) – death benefit pension worth $600,000 (24% of deceased's interest).
- Mark (9 year old son) – death benefit pension worth $400,000 (16% of deceased's interest).

Suzi has the $1.5m death benefit pension valued at its commencement. This value is recorded as a credit in her TBA on the date the death pension commences. As Suzi has not previously triggered a TBA, her personal TBC is $1.9m and she therefore has no excess. She is entitled to receive the death benefit pension.

Tiffany is entitled to receive 24% of the deceased member's superannuation interest. Therefore, her cap increment will be $456,000 which is calculated as 24% of the general TBC of $1.9m. Unfortunately, Tiffany will only be able to receive a death benefit pension up to the value of $456,000 – the remainder will be considered in excess of her modified TBC. The excess amount of $144,000 (i.e. $600,000 - $456,000) must be taken as a lump sum death benefit.

Mark is entitled to receive 16% of the deceased member's superannuation interest. His cap increment will be $304,000 which is calculated as 16% of the general TBC of $1.9m. Unfortunately, Mark will only be able to receive a death benefit pension up to the value of $304,000 – the remainder will be considered in excess of his modified TBC. The excess amount of $96,000 must be taken as a lump sum death benefit.

Scenario 2 – Multiple cap increments
Assume that same facts as the example above but tragically Suzi dies 6 months later at which time her pension is valued at $1.84m. Suzi also has a BDBN directing her pension to each child equally (that is 50% each).

As the death benefit pensions to the children are entirely funded from a retirement phase income stream of the deceased, they will both be entitled to a further cap increment. Each child will be entitled to an increment equal to 50% of the deceased parent's pension account balance at the time of death. Therefore, each child will get a cap increment of $920,000 which will enable each of them to commence a death benefit pension of equal value. This cap increment is in addition to the cap modification each child received when Jason died.

The ATO has confirmed that a member in receipt of two death benefit pensions can commute both income streams to start a new, consolidated death benefit pension. Therefore each child has the option to merge their two death benefit pensions together to start a new death benefit pension. Alternatively, depending on the relevant tax-free and taxable proportions of each death benefit pension, it may be more beneficial to maintain two pensions for each child to ensure the proportions are retained and quarantined.

Scenario 3 – Existing child pension
Assume that Mark was disabled due to a negligent driver colliding with the family car when he was 5 years old. At the time, Mark received a structured settlement and was receiving a pension payable from the SMSF.

Mark's structured settlement funded pension does not affect the calculation of any cap increment with respect to a death benefit pension from either parent. He effectively has three TBCs and any death benefit pension cap increment is disregarded with respect to Mark's future proportional indexation of his personal TBC.

TBC and death benefits

On 1 July 2017, Cliff (64 years old) had reduced his pension account to $1.6m by commuting back to accumulation an amount of $600k. His wife Mandy (59 years old) is still working part time and her salary funds maximum deductible contributions to her accumulation account, valued at $1.3m. As a couple, they require $130k p.a. indexed at 3% for expenses. Their SMSF returns a net 7% per annum.

Tragically, Mandy dies 5 years later and Cliff wants advice to maximise benefits in superannuation.

Scenario 1 – Maximise pension drawdowns
Cliff had implemented advice to fund income requirements entirely from his pension. His TBA stands at $1.6m. Over a 5-year period the SMSF snapshot is set out below.

Cliff's pension account	$1,453,430
Cliff's accumulation account	$841,531
Mandy's accumulation account	$1,967,086
Total superannuation benefits	**$4,262,047**

On Mandy's death, a death benefit of $1,967,086 is payable to Cliff. His TBA is $1.6m so he could commute his pension valued at $1,453,430 back to accumulation to create cap space to receive an equivalent amount as a death benefit pension.

Cliff's accumulation account (incl. commuted pension amount)	$2,294,961
Cliff's death benefit pension	$1,453,430
Total superannuation benefits	**$3,748,391**

The remainder of Mandy's benefits valued at $513,656 (i.e. $1,967,086 less $1,453,430) is in excess of Cliff's TBC and would need to be withdrawn from the SMSF as a lump sum death benefit.

Scenario 2 – Maximise pension commutations
Cliff had implemented advice to fund income needs by withdrawing the minimum amount from his pension supplemented with lump sum commutations from his pension. The SMSF 5-year snapshot is the same as scenario 1 as the same amount is withdrawn from superannuation. However, every lump sum commutation is a 'debit' to Cliff's TBA which reduces his TBA to $1,220,451 and creates cap space of $379,549 over the 5-year period.

On Mandy's death, he commutes his pension valued at $1,453,430 back to accumulation to create further cap space totaling $1,832,979 (i.e. $1,453,430 plus $379,549). This is the amount he can receive as a death benefit pension.

Cliff's accumulation account (incl. commuted pension amount)	$2,294,961
Cliff's death benefit pension	$1,832,979
Total superannuation benefits	**$4,127,940**

By withdrawing benefits from his pension account as lump sum commutations, Cliff has reduced the amount of excess death benefits to $134,107. Under this scenario, an additional amount of $379,549 has been retained in the SMSF.

Scenario 3 – Maximise lump sum accumulation withdrawals

Cliff had implemented advice to drawdown only the minimum pension required and to supplement income needs by withdrawing tax free lump sums from his accumulation account. His TBA is still valued at $1.6m. Over a 5-year period the SMSF snapshot is set out below.

Cliff's pension account	$1,854,839
Cliff's accumulation account	$440,123
Mandy's accumulation account	$1,967,086
Total superannuation benefits	**$4,262,048**

On Mandy's death, he commutes his pension valued at $1,854,839 back to accumulation to create cap space totaling $1,854,839. This is the amount he can receive as a death benefit pension.

Cliff's accumulation account (incl. commuted pension amount)	$2,294,962
Cliff's death benefit pension	$1,854,839
Total superannuation benefits	**$4,149,801**

By withdrawing lump sums from his accumulation interest, Cliff has reduced the amount of excess death benefits even further to $112,247.

Scenario comparison

Scenario	**Cliff's pension**	**Cliff's accumulation**	**Cliff's TBA**	**Cliff's TBA post commutation**	**Cliff's death benefit pension**
Max pension drawdowns	$1,453,430	$841,531	$1,600,000	$146,570	$1,453,430
Pension commutations	$1,453,430	$841,531	$1,220,451	($232,979)	$1,832,979
Lump sum withdrawals	$1,854,839	$440,123	$1,600,000	($254,839)	$1,854,839

White Label Document

Superannuation death benefits – Review succession plans

On 1 July 2021, the general Transfer Balance Cap (TBC) was indexed for the first time to $1.7 million from the original $1.6 million limit which was first introduced on 1 July 2017. On 1 July 2023, the general TBC was again indexed – this time up to $1.9 million.

As a result of this indexation, there is no longer a single cap that applies to all individuals. Instead, every member now has their own personal TBC of somewhere between $1.6 million and $1.9 million, depending on their personal circumstances. So, if you are already in receipt of a pension, it is important to review your personal TBC and seek help if you are unsure how to calculate, or locate, your personal TBC.

The TBC not only imposes a limit on the amount of capital that you can transfer to the retirement phase of super, but it also has an impact on what happens to your superannuation when you die. That is, the $1.9 million general TBC also applies to pensions paid to your dependants after you die (called death benefit pensions or reversionary pensions) meaning it can have a significant impact on your estate planning.

When it comes to the TBC, the main issues that you need to plan for in the event of death include:

- If your death benefit will be paid as a death benefit pension, your beneficiary's TBC will be relevant in determining how much can be paid as a pension to them. Any excess death benefit above their TBC must be paid as a lump sum to them. This limits the amount of money that can be retained within the superannuation environment upon your death.

- Where your dependant has already used some of their TBC, you may need to consider strategies which maximise the amount of your benefits that can remain in the SMSF on your death and minimize the amount that would need to be paid to your beneficiaries as a lump sum.

- The special rules which delay when the reversionary pension counts towards the new recipient's TBC and the differences between how reversionary and non-reversionary pensions are counted towards the new recipient's TBC.

- The special rules that operate to modify the TBC of a child in receipt of a death benefit pension to ensure that their personal TBC is not exhausted.

- The ability for a recipient of a death benefit pension to rollover the pension to another super fund (note, to satisfy the regulatory rules, a new death benefit pension must be commenced in the new fund or the amount must be withdrawn from the superannuation environment as a lump sum death benefit).

Given the potentially significant impact of the TBC with respect to SMSFs and estate planning, we would strongly recommend that trustees have their SMSF trust deed reviewed to ensure maximum flexibility when dealing with excess TBC amounts, rollover of death benefits, reversionary pensions and child pensions. This should be done alongside the review of any binding death benefit nomination(s) you have in place to ensure that they too are valid and provide the certainty in how your death benefits will be dealt with upon your death.

The payment and tax treatment of death benefits paid from an SMSF has traditionally been a complex area, with the need to obtain advice from a specialist. Overlayed with the recent indexation of the TBC, the need for specialist advice has never been more important.

How can we help?

If you would like to understand how the TBC affects your superannuation and succession plans, please feel free to give me a call to arrange a time to meet so that we can discuss your particular estate planning requirements in more detail.