

SHOULD MY PENSION BE REVERSIONARY?

An account based pension can either be reversionary or non-reversionary. Your pension will be reversionary if a decision was made at the commencement of the pension for it to be reversionary AND the pension documents (e.g. trust deed, request for pension, trustee minutes and pension terms and conditions) make this clear.

What does it mean if a pension is reversionary?

If you nominate a person to be your “reversionary beneficiary”, when you die whilst still in receipt of an account based pension, the trustee will continue to pay that pension (usually on the same terms and conditions) to that reversionary beneficiary if they survive you. No other death benefit will then need to be paid from the Fund with respect to your death.

Who can I nominate as a reversionary beneficiary?

You can nominate any of the following as a reversionary beneficiary:

- ✓ Your spouse;
- ✓ Your child, provided he/she is under 18, or between 18 and 25 and financially dependent, or permanently disabled;
- ✓ Anyone actually financially dependent upon you;
- ✓ Anyone with whom you are in an interdependency relationship

Can my reversionary beneficiary change his/her mind and take out a lump sum?

YES, the reversionary beneficiary can choose to commute (i.e. stop) that pension and then take a lump sum. There may be tax consequences of taking this action, which depends upon the age of the reversionary beneficiary and how soon after the member’s death this decision is made. Consequently, it is very important to seek advice as soon as a member of your SMSF dies.

Advantages of having a reversionary account based pension

- ✓ It provides some level of certainty to the pensioner as to whom their benefit will go to once they die.
- ✓ There will be no time gap between the death of the initial pension recipient and the provision of a pension to the beneficiary – this will maintain the “pension status for taxation purposes” of that pension balance.

Disadvantages of having a reversionary account based pension

The major disadvantage of naming a reversionary beneficiary is that situations change. If, for example you have named your spouse, but then subsequently divorce or separate you may want to change your reversionary beneficiary. To do this, you must commute your pension and start a new one with new terms and conditions (i.e. naming a new beneficiary). This may be disadvantageous from a tax planning perspective. However, if this is not done, the pension may end up going to an ex-spouse which could cause unnecessary legal problems.

Disclaimer

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BINDING DEATH BENEFIT NOMINATIONS

An alternative to naming a reversionary beneficiary is to put in place a binding death benefit nomination (BDBN). This is a legal document which requires the Trustees to pay a death benefit (either pension or lump sum) to either a dependent (as per reversionary beneficiaries) or to the estate (via the legal personal representative). If the BDBN requires the pension to continue to the dependent, then this also maintains the “pension status for taxation purposes” of that pension balance after the death of the pensioner.

A BDBN may need to be renewed after every three years, or it could be non-lapsing. This will depend upon the requirements of your Trust Deed. A BDBN must be drawn up properly otherwise it may be invalid.

A BDBN is often made because of the certainty that the BDBN gives. However, on the downside, circumstances may change between the making of the BDBN and death. This change in circumstances might make the BDBN entirely inappropriate (e.g. to an ex-spouse).

A BDBN can be revoked (whilst the member is still alive and not mentally incapacitated) and a new one drawn up, which means that the pension does not have to be commuted.

WHICH IS BETTER – A REVERSIONARY PENSION OR A BDBN?

It depends!! Some of the considerations are;

Cost – Nominating a reversionary beneficiary does not increase the cost of the pension documents, however, you will have to pay legal fees to have a BDBN drawn up.

Flexibility – A BDBN can be revoked (provided the member is of sound mind). A pension must be commuted (stopped) to change a nominated reversionary pensioner. This **could** affect taxation components of the members benefit and upset any tax planning which may have been in place.

WHAT HAPPENS IF I DO NOT WANT TO HAVE A REVERSIONARY PENSION OR A BDBN?

This is the case for many superannuation members – it is not a problem and in fact allows for more flexibility. However, you must be aware of the major issues - who will receive your death benefit? And what are the tax consequences?

On your death the remaining Trustee(s) of the fund will decide who/when/how to make the death benefit payment. Do you trust that person(s) to make the right decision?

There will be a gap between your death and the making of the decision re the death benefit. It is important that no assets of the fund are sold during that gap without obtaining proper advice as capital gains tax (CGT) may then apply to the superannuation fund. The shorter the gap, the better!! Reversionary pensions and BDBN's reduce the gap to zero.

ESTATE PLANNING

This document has discussed some of the estate planning issues surrounding your superannuation (your WILL does not necessarily direct what happens to your superannuation). We highly recommend you discuss your estate planning with a reputable superannuation lawyer. REMEMBER – let your advisor know as soon as possible after a member of your SMSF has died so that any possible taxation issues can be discussed.

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