



Timing the withdrawal of your superannuation to be tax effective

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As the population ages, the issue of timing the withdrawal of funds you've accrued in your superannuation account(s) becomes more important. Withdrawing from your super too early, you may miss out on the favourable tax treatment available to investing through superannuation. Not withdrawing from your super in time and your money may be subjected to tax which might otherwise not have applied.

When can superannuation be accessed?

Superannuation funds are available to be paid by way of a pension or by way of a lump sum, subject to achieving a condition of release.

The common conditions of release are when:

- you reach your preservation age and retire. If you were born before 1 July 1960, that age is 55. If you were born after 30 June 1964, it is 60. There is a graduating scale for those born between 1 July 1960 and 30 June 1964;
- you reach your preservation age, and you begin a transition-to-retirement income stream;
- you cease employment and are older than 60;
- you are 65, even if you have not retired;
- you have died.

There are other conditions of release, but for the purpose of this article, the focus is on the timing of withdrawing superannuation benefits before or after you have died.

How does tax work when withdrawing your superannuation

Once you turn 65, you can withdraw all (or any) of your superannuation at any time. No tax is payable on the lump sum withdrawal.

If you are over 65, but die with moneys still held within a superannuation scheme, tax may be payable depending on who receives those benefits. If the person to receive the benefit is, say, a spouse or de facto spouse (of any sex), then the benefits will not be taxed (they are a financial dependant for tax purposes). But if the benefit passes to a non-financial dependant, such as an adult child or, having passed to the estate, the benefits are directed by [the Will](#) to, say, a sibling, then tax will be payable by those beneficiaries.

The tax that may be payable if the super benefits are paid to someone other than a financial dependent will depend on the taxable component of the superannuation benefits.

Generally, the taxable component of the benefits will attract tax at the rate of 15%, and the 2% Medicare levy may also be payable on the benefits. For benefits derived from any life insurance policy within super (for dependants of a death benefit claim), the rate of tax payable could potentially be up to the rate of 30%, and again the 2% Medicare levy may apply.

This is very much a simple summary of the tax implications where a super fund member is over the age of 65 and dies with benefits still within super.

The dilemma – withdraw your superannuation now or leave it till you die?

Any decision to withdraw super benefits must be made only once proper financial (as distinct from legal) advice has been obtained. Generally, superannuation is a very tax effective structure to provide for a member in retirement so, withdrawing from that scheme can have significant tax and financial implications.

The legal issue is whether your estate plan might provide some ability for a decision to be made to withdraw your superannuation before you die, particularly if you were in an end-of-life situation and had [lost capacity at that time](#) to make the decision to withdraw.

What clauses related to superannuation can be included in your estate plan?

If you have lost capacity, then decisions to withdraw your superannuation benefits may be made by [your attorney](#) under a properly drawn [Enduring Power of Attorney](#).

That Enduring Power of Attorney may enable the attorney to withdraw your superannuation benefits, particularly if the benefits would be taxed if they passed, on your death, to non-financial dependants.

Your attorney would then manage the benefits for you during your lifetime and, upon your death, [your executors](#) would deal with the benefits in accordance with your Will.

Considering whether the super withdrawal was for the member or to be paid as death benefits

There have been some interesting cases of late in which the issue arises as to whether:

1. the benefits are member benefits (that is, withdrawn by the member and treated as being outside the superannuation scheme at the time of death); or
2. the benefits are death benefits (that is, the benefits pass by virtue of the member's death and, depending on whether the recipient is a financial dependant or not, determines whether tax is payable).

The cases here involve a situation where steps to withdraw the benefits from super were started, but the benefits had not been fully paid out when the member died.

Whether the benefits paid out after the member has died are:

1. member benefits (tax effective); or
2. death benefits (possibly not tax-effective, depending on who receives the benefits),

depends on a lot of surrounding facts, such as:

- when the withdrawal process commenced;
- whether some or all of the benefits were withdrawn before death;
- whether the trustee knew that the member had died before the benefits were paid out;
- the terms of the superannuation trust deed, and more.

A clear and valid Power of Attorney is essential

As part of any estate plan, you should consider having an Enduring Power of Attorney in place with some clear guidance that you authorise your attorney to withdraw your super benefits during your lifetime. At least then, there is an opportunity to effect the withdrawal and potentially minimise the tax implications.

You should also consider whether or not to have a [superannuation binding death benefit nomination](#) where you nominate your chosen beneficiaries of your superannuation benefits (both fund balance and any life insurance) upon your death.

Get help from an estate planning lawyer

We are highly experienced in Wills & Estate Planning. We can advise you on your estate plan, including your Will, Enduring Power of Attorney and Appointment of Enduring Guardian.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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