Pocket Summary

Estate Planning Superannuation, Trusts, Tax & Asset Protection

Reversionary & Non-reversionary Pensions

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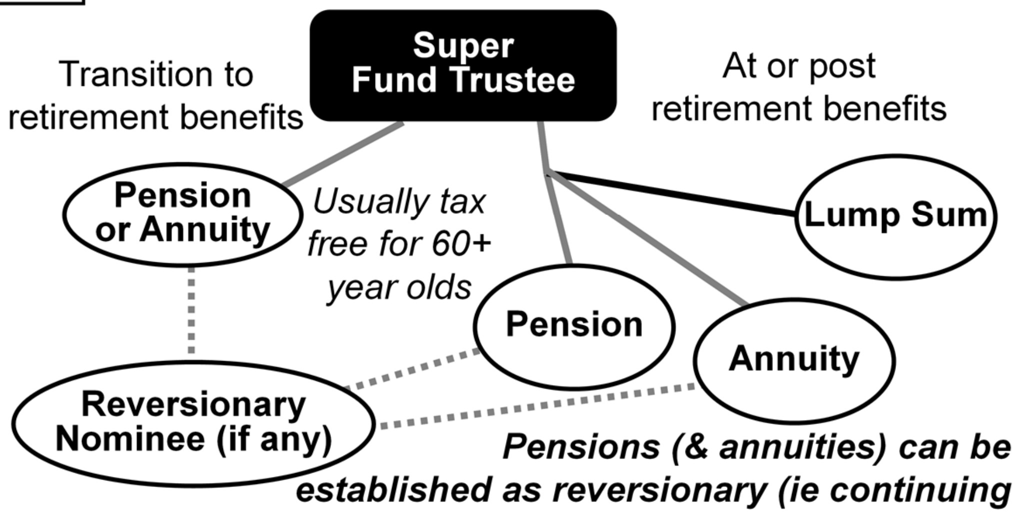

Pensions (& annuities) can be established as reversionary (ie continuing after death for a nominated eligible dependant, eg surviving domestic partner) or non-reversionary

Non-reversionary Pensions

Recipients of non-reversionary pensions in most Australian superannuation funds are able to determine what happens to their pension account balances when they die. They can prepare a binding death benefit nomination ("BDBN") or can ensure that a particular person, eg a domestic partner, will have control of their SMSF.

Commutable Reversionary Pensions

The initial recipients of commutable reversionary pensions are able to make decisions regarding the pension during their lifetimes. If there is still an account balance when the initial recipient dies, that balance automatically passes to the reversionary nominee (if surviving). The pension fund is in (tax-free) benefits phase before and after the reversion of funds.

Taxation of Reversionary Income Streams

Pensions are income tax free for recipients who are or will be 60 years of age or older during all or any part of the year of payment (or are recipients of a pension that has reverted or continued on from a recipient who had attained 60 before dying). Compulsory cashing provisions apply to child death benefit pensions at 25 years of age, unless the child pensioner has "substantially reduced capacity for communication, learning or mobility" and "the need for ongoing support services".

Cancelling Reversionary Income Streams

A living initial recipient can cancel most reversionary pensions and recommence the income stream as a non-reversionary pension. Exceptions include:

- Transition to retirement income streams where the initial recipient has not satisfied a subsequent condition of release; and
- Many pensions and annuities paid by the trustee of a defined benefits fund.

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Reversionary Income Streams

Automatically pass to a nominated "income stream" dependant, eg

- Spouse
- Child with a significant disability

To benefit, the reversionary nominee must both

- Survive the initial recipient &
- Still be an income stream dependant when the initial recipient dies

Reversion to Contributions and Investment Phase

The balance of a fund member's account ceases to be in benefits phase on the member's death and reverts to contributions and investment phase if:

• Under the terms of trust applicable to the fund, the trustee has discretion as to the payment of death benefits and ultimately pays a death benefit as either a lump sum or a pension (or an annuity) or a combination of both.

• The trustee is bound by a BDBN made by the member during the member's lifetime to pay the death benefits as a lump sum payment or payments, eg to one or more dependants or into the fund member's deceased estate.

• The trustee is bound by a BDBN made by the member during the member's lifetime, but has discretion to choose between the commencement of a death benefits pension and the payment of a lump sum.

• The trustee of an SMSF is bound by a BDBN to pay a pension death benefit, but only after an interim period (usually of 3 or 6 months) where the prospective recipient can consent to an alternate form of payment or an alternate recipient.

Benefits phase continues if the fund member's BDBN results in the creation of an immediate death benefits pension.

Using Reversionary Pensions to Prevent Challenges

A major reason for reversionary income streams can be to prevent a challenge:

• (Via the Superannuation Complaints Tribunal) to the payment of superannuation death benefits by the trustee of an APRA supervised fund; or

• (In NSW and if non-commutable) to a person's "notional estate" under the *Succession Act 2006*; or

• (In other Australian States and Territories) to the funds in the pension account.

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"Disability" for Super Death Benefit Purposes

Defined in s8(1) of the (federal) Disability Services Act 1986

Disability must be permanent & an intellectual, psychiatric, sensory or physical impairment

Must result in both

Reduced communication, learning or mobility

Need for ongoing support services

Less restrictive than SDT "severe disability"

Definition of "Disability" for Superannuation Death Benefit Purposes

To be eligible to receive a superannuation death benefit income stream such as a reversionary or non-reversionary pension or an annuity, a child of a deceased fund member must meet the "disability" requirements of s 8(1) of *Disability Support Act 1986*, ie:

"(a) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments;

(b) is permanent or likely to be permanent; and

(c) results in:

(i) a substantially reduced capacity of the person for communication, learning or mobility; and

(ii) the need for ongoing support services."

Definition of "Disability" for Special Disability Trust Purposes

The definition of disability for the purposes of a special disability trust (SDT) is more restrictive. Essentially s 1209M(2) provides that the principal beneficiary of an SDT must:

1. Has an impairment which would entitle them to a disability support pension;

2. Because of their disability, is not working, and is not likely to work, for more than 7 hours a week, at relevant minimum wages; and

3. Either lives in an institution, hostel or group home that provides care for people with disability and for which funding is provided (wholly or partly) under [a Government agreement] or has a disability that would, if the person had a sole carer, qualify the carer to receive a carer payment or carer allowance.