



Taxation Determination

Income tax: must a child of a deceased person be aged less than 18 at the time they receive the superannuation lump sum referred to in subsection 303-5(1) of the *Income Tax Assessment Act 1997* to satisfy, by virtue of paragraph 302-195(1)(b) of that Act, the requirement in paragraph 303-5(1)(c) that ‘you are a death benefits dependant’ of that deceased person?

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Ruling

1. No. The requirement in paragraph 303-5(1)(c) of the *Income Tax Assessment Act 1997* (ITAA 1997) that ‘you are a death benefits dependant’ is satisfied by virtue of paragraph 302-195(1)(b) of that Act if the deceased person’s child was aged less than 18 just before the deceased person died.

TD 2013/12

Date of effect

2. This Determination applies from 1 July 2007. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

26 June 2013

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

Explanation

3. Subsection 302-195(1) of the ITAA 1997 provides that:

A **death benefits dependant**, of a person who has died, is:

- (a) the deceased person's *spouse or former spouse; or
- (b) the deceased person's *child, aged less than 18; or
- (c) any other person with whom the deceased person had an interdependency relationship under section 302-200 just before he or she died; or
- (d) any other person who was a dependant of the deceased person just before he or she died.

4. This definition describes a range of possible relationships between a person and the deceased person. Paragraphs (c) and (d) require the relationship to which they refer to exist just before the deceased person died. However, paragraphs (a) and (b) do not refer to the time as at which a person's satisfaction of either of those paragraphs is tested.

5. On the basis that the definition of a 'death benefits dependant' relates to 'a person who has died', the relevant time as at which a person's satisfaction of either of paragraphs (a) or (b) of that definition is to be tested is logically related to the time the deceased person died.

6. It is the Commissioner's view that paragraphs (a) and (b) should be interpreted consistently with paragraphs (c) and (d) as testing a person's satisfaction of either of those paragraphs as at just before the deceased person died.

7. Therefore, the requirement in paragraph 303-5(1)(c) of the ITAA 1997 that 'you are a death benefits dependant' is satisfied by virtue of paragraph 302-195(1)(b) of the ITAA 1997 if the deceased person's child was aged less than 18 just before the deceased person died.

8. This is consistent with the wording of subregulation 6.21(2A) of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations). That subregulation specifies the only persons to whom a deceased member's benefits may be cashed as one or more pensions or annuities if the member dies on or after 1 July 2007. Subregulation 6.21(2B) of the SIS Regulations specifies the circumstances when (and times at which) a pension or annuity being paid to a child of the deceased member in accordance with subregulation 6.21(2A) must be commuted and cashed as a lump sum. Subsection 303-5 of the ITAA 1997 is intended to apply when that occurs in accordance with subregulation 6.21(2B) of the SIS Regulations: see paragraph 2.75 of the Explanatory Memorandum to the Tax Laws Amendment (Simplified Superannuation) Bill 2006.

9. Consequently, a superannuation lump sum arising from the commutation of a superannuation income stream that is payable to a person who is a child of a deceased member of the fund because of that person's death may be not assessable income and not exempt income, pursuant to section 303-5 of the ITAA 1997, even if the child is aged 18 or more when they receive the superannuation lump sum.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- Death benefits dependant
- Death benefits – superannuation benefits
- Lump sum – superannuation benefits
- Superannuation benefits
- Superannuation income stream

Legislative references:

- ITAA 1997
- ITAA 1997 302-195(1)
- ITAA 1997 302-195(1)(a)

- ITAA 1997 302-195(1)(b)
- ITAA 1997 302-195(1)(c)
- ITAA 1997 302-195(1)(d)
- ITAA 1997 303-5
- ITAA 1997 303-5(1)
- ITAA 1997 303-5(1)(c)
- SIS Regulations
- SIS Regulations 6.21(2A)
- SIS Regulations 6.21(2B)
- TAA 1953

Other references:

- Explanatory Memorandum to the Tax Laws Amendment (Simplified Superannuation) Bill 2006 paragraph 2.75

ATO references

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